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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 8.

ANNIE R. KEAN ET AL., PLAINTIFFS IN ERROR,

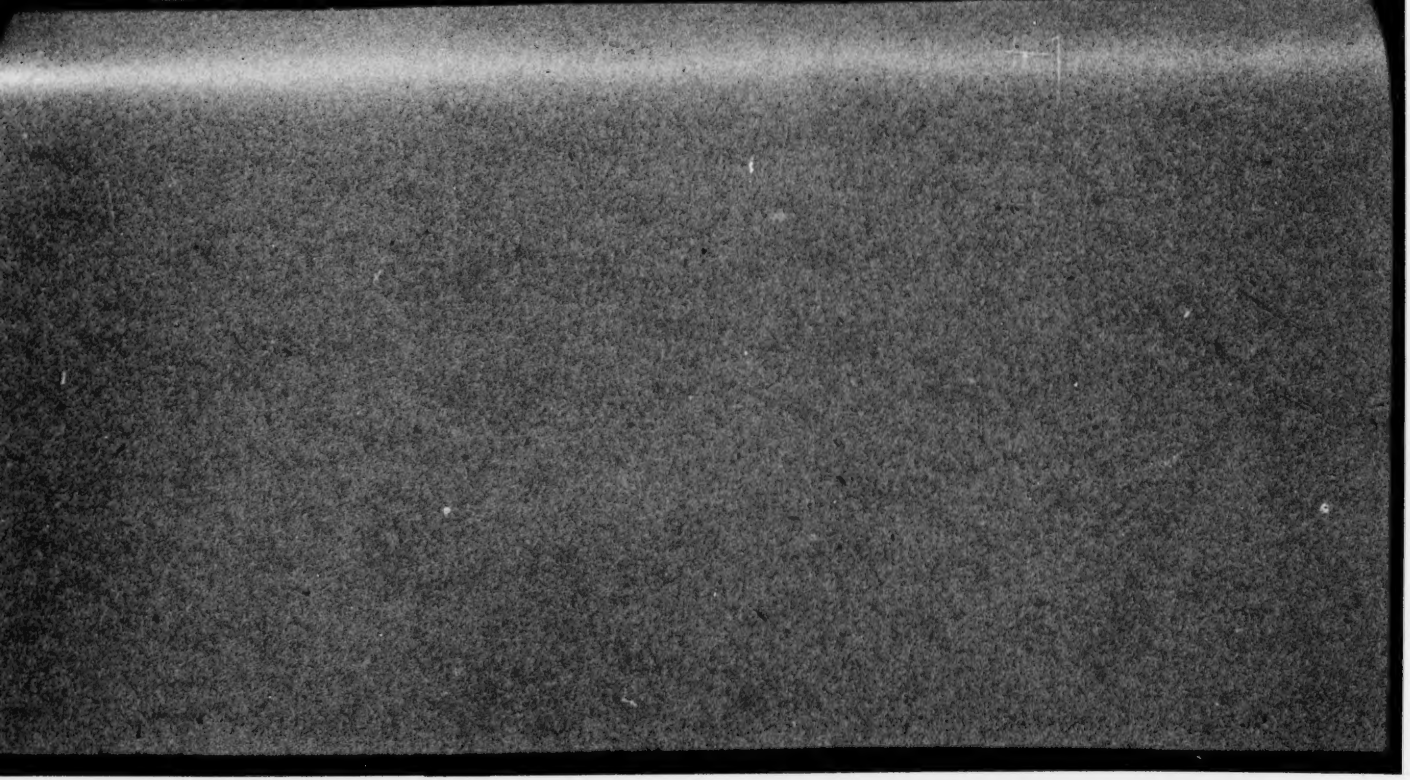
vs.

THE CALUMET CANAL AND IMPROVEMENT COMPANY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF INDIANA.

FILED APRIL 28, 1902.

(17,730.)



(17,730.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 47.

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vs.

THE CALUMET CANAL AND IMPROVEMENT COMPANY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF INDIANA.

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STATE OF INDIANA, }
In the Supreme Court. }

Be it remembered, that heretofore, to wit: on the 20th day of October, 1896, the same being the 128th judicial day of the November term of said court, Annie R. Kean, Samuel A. Kean, Henry Felt, Simon B. Felt, Sarah A. Smail and Charles Kreuter, by William Connell, their attorney, filed in the office of the clerk of the supreme court of Indiana, a transcript of the record and proceedings of the porter circuit court of said State in a cause wherein The Calumet Canal and Improvement Company was plaintiff, and Charles B. Alexander, *et al.*, were defendants, together with an assignment of errors endorsed thereon, which transcript and assignment of errors are in the words and figures following, to wit:

24 *Caption to Transcript from Lake Co.*

Was before the Honorable John H. Gillett, judge of the 31st judicial circuit of the State of Indiana and *ex officio* judge of the Porter circuit court, at a term of said court held at the court-house, in the city of Valparaiso, Porter county and State of Indiana, commencing on the 1st Monday of October, A. D. 1895.

CALUMET CANAL AND IMPROVEMENT COMPANY }
vs. } Complaint No. 7917.
CHARLES B. ALEXANDER ET AL. }

Be it remembered, that heretofore, to wit: on May 25th 1895, the following transcript of proceedings had in the Lake circuit court, in the above-entitled cause, was filed in the office of the clerk of the porter circuit court, and is in the words and figures following, to wit:

STATE OF INDIANA, }
County of Lake, } *ss:*

In the Lake Circuit Court, February Term, 1895.

Be it remembered, that heretofore, to wit: on February 5th, 1895, the same being the 2nd judicial day of the February term, 1895, of the Lake circuit court, begun and holden at the court-house in Crown Point, Lake county, Indiana, before the Honorable John H. Gillett, judge thereof, the following, among other proceedings were had in said court had and entered of record therein, to wit:

* * * * * * *

34 *Appearance & Default.*

And thereupon come the defendants, Henry B. Masen, and wife, and Anna R. Kean and Samuel A. Kean, by counsel, and enter their appearance herein, and thereupon all the defendants in this action except those so appearing are now each three times loudly called

and come not, but herein wholly make default, and it appearing to the court that said unknown defendants are minors under the age of twenty years, and that their names are unknown, John B. Peterson, a reputable attorney of this court, is appointed guardian *ad litem* of said minors, is sworn in open court and files his answer of and for said minors in these words (insert).

And afterwards, to wit; on May 18th, 1895, the same being the 24th judicial day of the April term, 1895, of the Lake circuit court, before the hon. judge aforesaid, the following further proceedings were by said court had and entered of record in said cause, to wit;

* * * * * * *

35–39 *Change of Venue.*

Affidavit for change of venue.

Thomas J. Wood, being duly sworn, deposes and says that he makes the following affidavit for and on behalf of the defendant in said cause, Samuel A. Kean, he being not present and a non-resident of the State of Indiana, and says that he verily believes that said defendant Samuel A. Kean, cannot have a fair and impartial trial in said cause on the ground that an odium attaches to the applicant and to his cause of defence, on account of local prejudice, and he therefore demands a change of venue of said cause from the county.

THOMAS J. WOOD.

Subscribed and sworn to before me this 18th day of May, 1895.

GEO. M. EDER, *Clerk.*

And afterwards, to wit: on May 21st, 1895, the same being the 26th judicial day of the April term, 1895, of the Lake circuit court, before the honorable judge aforesaid, the following further proceedings were by said court had and entered of record in said cause, to wit:—

* * * * * * *

40 Now again come the parties appearing and the defendant Henry B. Masen now files answer herein in these words (insert) and also files herein his cross-complaint against the plaintiff and the defendants Anna R. Kean and Samuel A. Kean, which cross-complaint is in these words, to wit: (insert) and the defendant Mrs. Henry B. Masen also files answer herein in these words (insert); and thereupon the court sustains the motion of the defendant Kean and orders the venue of this cause changed to Porter county and said defendant is given six days in which to perfect such change.

41 STATE OF INDIANA, } *ss*:
Lake County, }

I, George M. Eder, clerk of the Lake circuit court hereby certify that the above and foregoing is a full, true and complete copy of all the proceedings had and entered of record in said cause, as the same appear of record in my office.

[OFFICIAL SEAL.] Witness my hand and official seal this 24th day of May, 1895.

GEORGE M. EDER,
Clerk Lake Circuit Court.

42-46 Be it further remembered, that on Monday, July 1st, 1895, the same being the 1st judicial day of the adjourned May term 1895, of the Porter circuit court, held at the court-house in the city of Valparaiso, and before the Honorable John H. Gillett, regular judge thereof, the following proceedings were had and entered of record, in the following cause, to wit:

* * * * * * *

47 Now again come the parties heretofore appearing herein, and thereupon Henry B. Masen files answer and cross-complaint herein, in these words, to wit:

Answer of Mason.

STATE OF INDIANA, }
Lake County. }

Lake Circuit Court, April Term, 1895.

CALUMET CANAL & IMPROVEMENT COMPANY }
vs. }
CHARLES B. ALEXANDER ET AT. }

The defendant Henry B. Masen for answer to the plaintiff's complaint disclaims any interest in and to the lands mentioned in the plaintiff's complaint that are situated in sections sixteen (16) seventeen (17), twenty (20), twenty-one (21) twenty-two (22) twenty-seven (27), twenty-eight (28) thirty (30) thirty-three (33) thirty-four (34) and thirty-five (35) in township thirty-seven (37) north of range nine (9) west, and the northwest quarter (N. W. ¼) of the southwest quarter (S. W. ¼) and the southeast quarter (S. E. ¼) of the southeast quarter (S. E. ¼) of section twenty-four (24) in said township and range.

The said defendant further disclaims any interest in or to all that part of section eighteen (18) township twenty-seven (27) north of range nine (9) west, which is east of the meander line of Lake George as shown by the survey of 1835, also all that part of section nineteen (19) east and south of the meander line of said lake as shown by said survey, also all that part of the south half of section twelve (12) township thirty-seven (37) north of range ten (10) west, east of the meander line of lake as shown by said survey, also all that part of the south half of section thirteen (13) township thirty-seven (37) north of range ten (10) west, which lies between the meander lines of said two lakes as shown by said survey; also all that part of the northwest quarter (N. W. ¼) of section twenty-four (42), township thirty-seven (37) north range ten (10) south of the meander line of said Wolf lake as shown by the said survey and also all that part of the northeast quarter (N. E. ¼) of said section twenty-four (24) in said township, thirty-seven (37) north of range

ten (10) west, that is south and east of the meander line of said Wolf lake and west of the meander line of said Lake George, as shown by said survey, and all of section eighteen (18) township thirty-
48 seven (37) north of range nine (9), which is east of the meander line of said Lake George, as shown by said survey and also all of section nineteen (19) in said last-named township and range, that is south and east of the meander line of said last-named lake.

And as to all the other lands mentioned in the plaintiff's complaint, the said defendant denies each and every allegation in the plaintiff's complaint.

Wherefore, the said defendant asks judgment.

49 *Cross-complaint of Mason.*

The defendant Henry B. Masen, by way of cross-complaint against the plaintiff and the defendant Annie R. Kean, and Samuel A. Kean, complains and says that he is the owner and entitled to the possession of the following-described lands located in Lake county, Indiana, and described as follows, to wit:—

Lote five (5), six (6), seven (7), eight (8), nine (9), ten (10) and the southwest quarter (S. W. ¼) of section twelve (12) in township thirty-seven (37), north of range ten (10) west; the north half of section thirteen (13); the southwest quarter (S. W. ¼) of section thirteen (13) and lots one, (1), three (3), four (4), five (5), six (6), seven (7) and eight (8). all in said section thirteen (13), in said township and range; and lots four (4), five (5), six (6), and seven (7), in section twenty-four (24) in said township and range; and also of the following lands in township thirty-seven (37), north of range nine (9) west, to wit;—Lots five, (5), six (6) seven (7) and eight (8), and the west half of section eighteen (18), and lots five (5) seven (7) eight (8), nine (9), ten (10), and eleven (11), in section nineteen (19), the said lands so owned being all the lands in said section within the meander lines of the said lakes as shown by the survey of 1835, and including lot one (1) in said section thirteen (13), as shown by said survey. That the plaintiff and the said defendants, Kean and Kean claim some interest and title in and to the said lands and lots adverse to the defendant Masen. That the claims of the said Kean and Kean and of the plaintiff serve to cast a cloud upon the title of the cross-complainant, although they are void and of no force and effect.

Wherefore the said Henry V. Masen asks that his title in and to the said lands be quieted in him and set at rest, and for all other relief proper and just.

McMAHAN & MEEKER,
Att'ys for Masen.

49½ And the defendants Samuel A. Kean and Annie R. Kean file answer and answer to cross-complaint herein, in these words, to wit:

STATE OF INDIANA, } ss:
County of Lake, }

Answer to Cross-complaint—Submission—Finding.

In the Porter Circuit Court, May Term, 1895.

CALUMET CANAL & IMPROVEMENT CO. }
vs.
CHARLES B. ALEXANDER ET AL. }

The defendants, the Keans, answer the cross-complaint of the Masons—Henry B. Mason—and denies each and every allegation therein contained.

FENNELL & WOOD,
Att'ys for the Kean & Kean.

And thereupon this cause is submitted to the court for trial without the intervention of a jury and the court having heard the evidence and being sufficiently advised in the premises finds for the defendant Samuel A. Kean and Anna R. Kean, that they are the owners in fee of the following-described real estate, to wit: The undivided half of the east half of the northwest quarter (N. W. ¼) and the undivided half of lots five (5), six (6), nine (9), ten (10) and eighteen (18) in township thirty-seven (37), range nine (9) west containing two hundred twenty-three acres in Lake county, Indiana, according to the Wolcott survey of 1874, and that their title thereto ought to be quieted and set at rest as against each and all of these defendants.

And the court does now find for the plaintiff that it is the owner in fee of the following-described real estate in township thirty-seven (37) range nine (9) west, in Lake county, Indiana, to wit: All of fractional section fifteen (15); lots one (1), two (2), three (3), five (5) six (6), seven (7), eight (8), in section sixteen (16), the same being all of said section except the west half of the northwest quarter (N. W. ¼) thereof; the northeast quarter (N. E. ¼) of the northeast quarter (N. E. ¼); the south half of the northeast quarter (N. E. ¼); the southeast quarter (S. E. ¼), the west half of the northwest quarter (N. W. ¼), the west half of the southwest quarter (S. W. ¼) and the southeast quarter (S. E. ¼) of the southwest quarter (S. W. ¼) of section seventeen (17); lots number three (3) and four (4) survey of 1835, of
50 section eighteen (18), the same being all of the south half of said section; lots number one (1), two (2), three (3) and four (4); the southeast quarter (S. E. ¼) of the northeast quarter (N. E. ¼) and the southeast quarter (S. E. ¼) survey of 1835, of section nineteen (19) the same being the whole of said section; the north half and the southeast quarter (S. E. ¼) of section twenty (20); all of section twenty-one (21); all of fractional section twenty-two (22); all of section twenty-seven (27); all of section twenty-eight (28); the northeast quarter (N. E. ¼), the north half of the northwest quarter (N. W. ¼), the north half of the southeast quarter (S. E. ¼), and the southeast quarter (S. E. ¼) of the southeast quarter (S. E. ¼) of section

thirty (30); all of section thirty-three (33) which lies north of the Calumet river; lot number four (4), and all of the fraction south of the river, of section thirty-five (35).

Also the plaintiff is the owner in fee and in possession of all the following real estate situate in township thirty-seven (37), north of range ten (10) west, in Lake county, Indiana, to wit:

Lots three (3) and four (4) survey 1834, of section twelve (12) the same being all of the south half of said section; lots one (1) and two (2) survey 1834, section thirteen (13) the same being the whole of said section; lots two (2) and three (3) and the northwest quarter of the southwest quarter and the southeast quarter of the southeast quarter, survey of 1834, of section twenty-four (24) the same being the whole of the north half of said section, and the northwest quarter of the southwest quarter and the southeast quarter of the southeast quarter of said section, excepting and reserving from said above descriptions the following tract lying, being and situate in sections twenty (20) twenty-one (21) and twenty-eight (28) to wit: Commencing at a point on the east line of the Indiana boulevard, where the center line of section twenty (20) in township thirty-seven (37) north of range nine (9) west intersects the same and running thence east along said center line to the quarter post on the east line of said section twenty (20); thence southeasterly in a straight line to the southeast corner of the north half of the northwest quarter of section twenty-eight (28) in township thirty-seven (37) range nine
51 (9) aforesaid; thence west on the south line of said north half of the northwest quarter of section twenty-eight (28) to the east line of said Indiana boulevard, thence northwesterly along the easterly line of said boulevard to the point or place of commencement, containing one hundred and sixty acres and that its title thereto ought to be quieted, and set at rest as against each and all of these defendants.

Judgment.

It is therefore considered adjudged and decreed by the court that the title of the defendants Samuel A. Kean, and Anna R. Kean in and to the real estate heretofore described and found to be theirs in fee herein be and the same is hereby forever quieted and set at rest as against each and all of their codefendants, and this plaintiff and their heirs and all persons claiming, by through or under them, and they are hereby restrained from asserting or setting *or setting* up any claim in or to said above-described real estate whatsover.

And it is further considered adjudged and decreed by the court that the title of the plaintiff in and to the real estate heretofore described herein and found to be its in fee-simple be and the same is hereby forever quieted and set at rest as against each and all of these defendants and their heirs and all persons claiming by through or under them and they are hereby enjoined and perpetually restrained from asserting or setting up any claims in or to said above-described real estate whatsoever.

And now said plaintiff files motion for a new trial herein, as of

right, as to the defendants Samuel A. and Anna R. Kean, and the same is in these words, to wit:

Motion for New Trial.

STATE OF INDIANA, } ss:
County of Porter, }

Circuit Court, May Term, 1895.

CALUMET CANAL & IMPROVEMENT COMPANY }
vs.
CHARLES B. ALEXANDER ET AL. }

The plaintiff moves the court for new trial in this action as of right as against Samuel A. Kean and Anna R. Kean, and tenders herewith its undertaking with William Johnston as surety conditioned as required by law.

WILLIAM JOHNSTON,
WILLIAM O. JOHNSON,
Att'ys for Plaintiffs.

52 We undertake that plaintiff in the above-entitled cause shall pay all costs and damages which shall be recovered against it herein.

CALUMET CANAL & IMPROVEMENT COMPANY,
By W. M. JOHNSTON.
WILLIAM JOHNSTON.

Examined and approved by me July 1st, 1895.
JOHN H. GILLETT, *Judge.*

and now tenders bond with William Johnston as surety thereon, which bond is approved by the court, and new trial as of right granted.

And now by agreement of plaintiff and the defendant Henry B. Masen, their controversy is to be heremafter settled in this cause, the same as though no judgment had been entered, and now Henry B. Masen files motion for new trial, as of right as to the defendants Samuel A. Kean and Anna R. Kean, which motion is in these words, to wit:

New Trial Granted.

STATE OF INDIANA, } ss:
County of Porter, }

Porter Circuit Court, May Term, 1895.

CALUMET CANAL & IMPROVEMENT COMPANY }
vs.
CHARLES B. ALEXANDER ET AL. }

The defendant and cross-complainant Henry B. Masen, moves the court for a new trial of this action as a matter of right, and tenders

herewith his undertaking with Willis C. McMahan, as surety as required by law.

HENRY B. MASEN,
By W. C. McMAHEN, *His Att'y.*

and which motion the court does now overrule, to which ruling of the court, the defendant Masen excepts and is given 120 days for bill of exceptions.

And now plaintiff asks and is granted rule on Masen to furnish abstract herein and defendant Masen now files motion in these words:

Motion & Bond of Mason for New Trial.

STATE OF INDIANA, } ss:
County of Porter, }

Porter Circuit Court, May Term, 1895.

CALUMET CANAL & IMPROVEMENT COMPANY }
vs. }
CHARLES B. ALEXANDER ET AL. }

53–58 The defendant and cross-complainant, Henry B. Masen, moves the court for a new trial of this action as a matter of right and tenders herewith his undertaking with Willis C. McMahan as surety, as required by law.

HENRY B. MASEN,
By W. C. McMAHAN,
His Attorney.

Bond.

STATE OF INDIANA, } ss:
County of Porter, }

Porter Circuit Court, May Term, 1895.

CALUMET CANAL & IMPROVEMENT COMPANY }
vs. }
CHARLES B. ALEXANDER ET AL. }

We undertake that the defendant Henry B. Masen, in the above-entitled cause shall pay all costs and damages, which shall be recovered against him therein.

HENRY B. MASEN,
By WILLIS C. McMAHAN,
His Attorney-in-fact.
WILLIS C. McMAHAN.

Approved July 1st, 1895.

JNO. H. GILLETT,
Judge Porter Circuit Court.

for new trial herein as of right, and now files bond with Willis C. McMahan, as surety thereon, which bond is approved by the

court, and a new trial as of right, is granted the said Henry B. Masen.

Be it further remembered, that on Tuesday, October 8th, 1895, the same being the second judicial day of the October term, 1895, of the Porter circuit court, held at the place and before the honorable judge aforesaid, the following further proceedings were had and entered of record, by said court, in the following cause, to wit:

* * * * * * *

59–65 Comes the plaintiff herein, by William O. Johnson and William Johnston, its attorneys and files its amended complaint, in these words:

* * * * * * *

66–72 making the following additional parties defendant in this cause, to wit:

* * * * * * *

73–77 And thereupon comes the defendant-, Henry B. Masen, Fay C. Masen, Annie R. Kean, Samuel A. Kean, Henry H. Felt, Sarah A. Smail, Orson B. Felt, and John Kreuter, and file their separate and several answer to the amended complaint herein in these words to wit:

* * * * * * *

78 *Answer to Amend. Comp.*

The defendants Anna R. Kean, Henry B. Masen, Samuel A. Kean, Sarah A. Smail, Orson Felt, Henry B. Felt and Charles Kreuter for a further answer to the plaintiff's complaint disclaim any interest in and to the lands mentioned in plaintiff's complaint that are situated in sections sixteen (16), seventeen (17), twenty (20), twenty-one (21), twenty-two (22), twenty-seven (27), twenty-eight (28), thirty (30), thirty-three (33), thirty-four (34), and thirty-five (35), in township thirty-seven (37) north of range nine (9) west, and as to those parts of sections twelve (12), thirteen (13), eighteen (18), nineteen

79–85 (19), and twenty-four (24), mentioned in said complaint which are east, south or west of the meander line of the beds of Wolf and George lakes.

And further answering these defendants deny each and every allegation contained in said complaint except as to the land above disclaimed.

And further answering these defendants say that the cause of action if any, did not accrue within fifteen years prior to the commencement of this suit.

And further answering these defendants say the cause of action if any, did not accrue within twenty (20) years prior to the commencement of this suit.

WILLIAM P. FENNELL,
THOS. J. WOOD,
Att'ys for said Defendants.

And the defendant Henry B. Masen files his cross-complaint against the plaintiff in these words, to wit:

Cross-complaint of Mason.

STATE OF INDIANA, } ss:
Lake County, }

Lake Circuit Court, April Term, 1895.

* * * * * * *

86–92 The defendant Henry B. Masen by way of cross-complaint against the plaintiff and the defendant Annie R. Kean and Samuel A. Kean complains and says that he is the owner and entitled to the possession of the following-described land located in Lake county, Indiana, and described as follows, to wit:—

Lots five (5), six (6), seven (7), eight (8), nine (9), ten (10), and the southwest quarter (S. W. ¼) of section twelve (12) in township thirty-seven, (37) north of range ten (10), west; the north half of section thirteen (13); the southwest quarter of section thirteen (13), and lots one (1), three (3) four (4), five (5), six (6), seven (7) and eight (8), all in said section thirteen (13), in said township and range; and lots four (4), five (5), and six (6) and seven (7) in section twenty-four (24) in said township and range; and also of the following lands in township thirty-seven (37) north of range nine (9), west to wit; lots five (5), six (6), seven (7), eight (8) nine (9), ten (10) and eleven (11) in section nineteen (19), the said lands so owned being all the lands in said section within the meander lines of the said lakes as shown by the survey of 1835, and including lots one (1) in said section thirteen (13) as shown by said survey.

That the plaintiff and said defendants Kean & Kean claim some interest and title in and to the said lands and lots adverse to the defendant Masen.

That the claims of the said Kean & Kean and of the plaintiff served to cast a cloud upon the title of the cross-complainant, although they are void and of no force and effect.

Wherefore, the said Henry B. Masen asks that his title in and to the said lands be quieted in him and set at rest, and for all other relief proper and just.

McMAHAN & MEEKER,
Att'ys for Masen.

* * * * * * *

93–98 And thereupon the plaintiff files answer to the cross-complaint of the defendant Henry B. Masen, which answer is in these words, to wit:

* * * * * * *

99–104 *Answer to Cross-comp.*

The plaintiff for answer to the cross-complaint of Henry B. Masen, denies each and every allegation therein contained.

W. O. JOHNSON,
WILLIAM JOHNSTON,
Att'ys for Pl'ff.

And thereupon on further motion of the plaintiff the depositions on file are ordered published.

Be it further remembered that on Monday November 4th, 1895, the same being the 25th judicial day of the October term, 1895, of the Porter circuit court, held at the place and before the hon. judge aforesaid, the following further proceedings were by said court had and entered of record in the above-entitled cause, to wit:

* * * * * * *

105–110 Now again come the parties heretofore appearing, by counsel, and the plaintiff now files reply to the answer of Annie R. Kean, Sarah A. Smail, Samuel A. Kean, Orson B. Felt, Henry H. Felt, and Charles Kreuter which reply is in these words, to wit:

Reply Filed.

111–117 Reply.

The plaintiff for reply to the answer of the defendants Annie R. Kean, Samuel A. Kean, Charles Kreuter, Sarah A. Smail, Orson B. Felt and Henry H. Felt denies each and every allegation therein contained.

W. O. JOHNSON,
WILLIAM JOHNSTON,
Att'ys for Pl'ff.

And thereupon the defendants Annie R. Kean, Samuel A. Kean, Sarah A. Smail, Orson B. Felt, Henry H. Felt, Charles Kreuter, and Henry B. Mason file their separate and several motion- in these words, to wit:

STATE OF INDIANA, } ss:
County of Porter, }

Porter Circuit Court, October Term, 1895.

* * * * * * *

118 The defendants Annie R. Kean, Samuel A. Kean, Orson Felt, Henry B. Felt, Sarah Smail, Charles Kreueter, and Henry B. Masen, separately and severally and each for himself moves the court to strike out and suppress separately and severally from the deposition of Jacob Forsyth the following questions, answers and parts of answers separately and severally considered as follows:

Motion to Strike Out Parts of Deposition.

Question four and answer.
Question five and answer.
Question six and answer.
Question seven and answer.
Question eight and answer.
Question nine and answer.

Question eleven and answer.
Question twelve and answer.
Question fifteen and answer.
Question sixteen and answer.
Question eighteen and answer.
Question twenty and answer.
Question twenty-two and answer.
Question twenty-five and answer.
Question twenty-nine and answer, and
Question four on page nine and the answer thereto, and
Question five and answer thereto on page No. nine.

For the reason that the said questions and each of them call for the conclusion of the witness; and are immaterial and irrelevant to prove any of the issues of the case and for the reason that they and each of them seek to prove the payment of taxes by oral evidence.

And for the further reason that the records are the best evidence of the facts to each of said questions.

And they seek to prove title to land by oral evidence and because the record is the best evidence.

W. C. McMAHAN,
Att'y for Masen.
W. P. FENNELL AND
THOS. J. WOOD,
For Defendants Anna R. Kean, Samuel A. Kean, Orson Felt, Henry B. Felt, Sarah A. Smail, and Charles Kreuter.

119–125 To strike out parts of the deposition of Jacob Forsyth, whereupon counsel for the plaintiff states and agrees that plaintiff will not claim anything for the evidence of said Forsyth in so far as his deposition tends to prove title by parol evidence.

Whereupon a jury is waived and this cause is submitted to the court for trial.

Be it further remembered that on Tuesday November 5th, 1895, the same being the 26th judicial day of the October term, 1895, of the Porter circuit court, held at the place and before the honorable judge aforesaid, the following proceedings were by said court had and entered of record in said cause, to wit:

* * * * * * *

126–132 *Ruling on Motion to Suppress.*

Now again comes the plaintiff, and come also defendants and cross-complainant heretofore appearing, and the motion of the defendant so appearing, to suppress part of the deposition of the witness Jacob Forsyth, is sustained as to question four (4) on page nine (9), and the answer thereto, and their motion as to the remainder of the deposition is overruled, to which ruling of the court, the said defendants and cross-complainant severally except.

Finding of Court.

And the court having heard the remainder of the evidence in this cause, and the arguments of counsel, and being sufficiently advised in the premises, does now find for the plaintiff, against all the defendants and cross-complainant, that all the allegations of its complaint are true; that it is the owner in fee-simple of the real estate described in the complaint; that the defendants claim an interest therein adverse to the plaintiff; that their claim is without right, is unfounded, and is a cloud upon its title, and the plaintiff is entitled to have its title to said lands quieted as well against the cross-complainant as the defendants.

Thereupon the defendants Annie R. Kean, Samuel A. Kean, Orson B. Felt, Henry H. Felt, Sarah A. Smail, and Charles Kreuter, separately and severally file motion for a new trial, which several motions are overruled by the court, to which ruling of the court the said several defendants except, and which said motion is in these words, to wit:

* * * * * * *

133–139 *Motion for a New Trial.*

The defendants named in the said cause, to wit—Annie R. Kean, Samuel A. Kean, Orson B. Felt, Henry B. Felt, Sarah A. Smail, and Charles Kreuter, severally move the court for a new trial in the said cause, on these grounds to wit:

First. That the finding of the court is contrary to law.

Second. That the finding of the court is contrary to the evidence.

WILLIAM P. FENNELL,
THOS. J. WOOD,
Att'ys for said Def'ts.

Thereupon the defendant and cross-complainant Henry B. Masen, files motion for a new trial, in these words, to wit:

STATE OF INDIANA, } ss:
County of Porter, }

Porter Circuit Court, October Term, 1895.

* * * * * * *

140 *Mason's Motion for New Trial.*

Henry B. Masen moves the court for a new trial of this cause for the following reasons:

First. That the court erred in admitting in evidence over the objection and exception of the defendant Masen, the copy of the plat of township thirty-seven (37) north of range ten (10) west, introduced by plaintiff.

Second. That the court erred in admitting in evidence, over the objection and exception of the defendant Henry B. Masen, the copy of the field-notes of the survey introduced by the plaintiff for township thirty-seven (37) north of range ten (10) west.

Third. The court erred in admitting in evidence over the objection of the said Masen, the patent from the United States to the State of Indiana, dated March 24, 1853, in so far as the same pertains to sections twelve, (12) and thirteen (13) township thirty-seven (37) north of range ten (10) west.

Fourth. The court erred in admitting in evidence the patent from the State of Indiana to George W. Clark, dated June 11, 1856, for lot No. three (3) of the southeast quarter (S. E. ¼) of section twelve (12) township thirty-seven (37) north of range ten (10) west.

Fifth. The court erred in admitting in evidence, over the objection of the defendant Masen, the patent from the State of Indiana, to George W. Clarke, dated June 11, 1856, conveying lot one (1) of the northeast quarter, (N. E. ¼) of section thirteen (13) township thirteen (13) north of range ten (10) west.

Sixth. The finding of the court is contrary to the law.

Seventh. The finding of the court is contrary to the evidence.

Eighth. The judgment of the court is contrary to the law.

Ninth. The judgment of the court is contrary to the evidence.

W. C. McMAHAN,
Att'y for Henry B. Masen.

141 Which motion is likewise overruled by the court to which ruling of the court the defendant Henry B. Masen, excepts, and one hundred and twenty (120) days is given to each of said defendants so moving for a new trial to make and file his, her and their bill of exceptions.

Final Judgment.

It is therefore considered and adjudged by the court that the cross-complainant Henry B. Masen take nothing by his cross-complaint, and that the plaintiff is the owner in fee-simple of the real estate described in its complaint and situate in the county of Lake and State of Indiana, to wit.

All of the following-described real estate situate in township thirty-seven (37) north of range ten (10) west, in Lake county, Indiana, to wit: Lots three (3) and four (4) in section twelve (12), survey of 1834, the same being all of the south half of said section; lots one (1) and two (2) in section thirteen (13) survey of 1834, the same being all of said section; lots two (2) and three (3) the same being all of the north half of section twenty-four (24) township thirty-seven (37) north of range ten (10) west; the northwest quarter (N. W. ¼) of the southwest quarter (S. W. ¼); the southeast quarter (S. E. ¼) of the southeast quarter (S. E. ¼), all in section twenty-four (24) survey of 1834.

Also all of factional section fifteen (15); lots number one (1) two (2), three (3), five (5) six (6) seven (7) and eight (8) in section sixteen (16); the northeast quarter (N. E. ¼) of the northeast quarter (N. E. ¼) the south half (S. ½) of the northeast quarter (N. E. ¼); the southeast quarter (S. E. ¼) and the west half of the northwest quarter (N. W. ¼); the west half of the southwest quarter (S. W. ¼) and the southeast quarter (S. E. ¼) of the southwest quarter (S. W. ¼) all in

section seventeen (17); lots number three (3) four (4), survey of 1835, in section eighteen (18) the same being the whole of the south half of said section; lots number one (1) two (2), three (3) and four (4) and the southeast quarter (S. E. ¼) of the northeast quarter (N. E. ¼) and the southeast quarter (S. E. ¼) survey of 1835, all in section nineteen (19), the same being the whole of said section nineteen (19); the north half and the southeast quarter (S. E. ¼) of section twenty (20); and all of section twenty-one (21); all of fractional section twenty-two (22); all of section
142 twenty-seven (27); all of section twenty-eight (28); the northeast quarter (N. E. ¼); the north half of the northwest quarter (N. W. ¼) the north half of the southeast quarter (S. E. ¼) and the southeast quarter (S. E. ¼) of the southeast quarter (S. E. ¼) all in section thirty (30); all of section thirty-three (33) which lies north of the Calumet river; all of section thirty-four (34) which lies north of the Calumet river; lot four (4) and the fraction south of river in section thirty-five (35), all in township thirty-seven (37) north of range nine (9) west, excepting and reserving the following-described tract; commencing at a point on the east line of the Indiana boulevard where the center line of section twenty (20) in township thirty-seven (37) north of range nine (9) west intersects the same and running thence east along the said center line to the quarter post on the east line of said section, thence southeasterly in a straight line to the southeast corner of the north half of the northwest quarter (N. W. ¼) of section twenty-eight (28) in township thirty-seven (37) range nine (9) thence west on the south line of said north half of the northwest quarter (N. W. ¼) of section twenty-eight (28), to the east line of said Indiana boulevard, thence northwesterly along the easterly line of said boulevard to the place of beginning, said exception containing one hundred and sixty (160) acres.

That all of the defendants' and the cross-complainant Henry B. Masen'- claims thereto and therein are without right and unfounded and that plaintiff's title thereto be and the same is hereby quieted as against each and all of them.

It is further adjudged that the plaintiff recover its costs and charges herein laid out and expended, of and from the defendants Annie R. Kean, Samuel A. Kean, Henry B. Masen, Fay C. Masen, Sarah A. Smail, *Cah*rles Kreuter, Orson B. Felt and Henry H. Felt.

And the defendants and each of them are further hereby ordered by the court to make deed for all of said premises to the plaintiff. And now they and each of them having failed to execute said deed, William Johnston, is hereby appointed a commissioner to convey said real estate to plaintiff, which deed when executed by him shall vest in the plaintiff all the right, title and interest of the defendants and each of them in and to said real estate and every part thereof.

143 And now comes William Johnston, the commissioner heretofore appointed and reports to court that he has made deed to said plaintiff for all of said lands above named in accordance with the decree of this court, and thereupon the court examines said deed and approves the same and notes its approval on the

margin thereof, which deed is in the words and figures as follows (insert).

144 *Longhand Manuscript Filed.*

STATE OF INDIANA, } ss:
County of Porter, }

CALUMET CANAL & IMPROVEMENT COMPANY }
vs.
CHARLES B. ALEXANDER ET AL. }

Be it remembered that heretofore, to wit, on the 22nd day of February, 1896, Steven P. Corboy, the reporter, who took the evidence in the said cause filed in the office of the clerk of the Porter circuit court his longhand manuscript of the said evidence which said longhand manuscript was afterwards encorporated into the bill of exceptions hereinafter set forth.

145 *Filing of Bill of Exceptions.*

CALUMET CANAL & IMPROVEMENT COMPANY }
vs.
CHARLES B. ALEXANDER ET AL. }

Be it remembered that heretofore, to wit:—on the 7th day of October, 1896, the following bill of exceptions of the above-entitled cause was filed in the office of the clerk of the Porter circuit court and is in the words and figures as follows to wit.:

146 *Reporter's Certificate.*

STATE OF INDIANA, } ss:
Porter County, }

In the Porter Circuit Court, October Term, 1895.

CALUMET CANAL & IMPROVEMENT COMPANY }
vs.
CHARLES B. ALEXANDER ET AL. }

Bill of exceptions.

Be it remembered that on the trial of said cause Stephen P. Carboy was employed by the parties thereto to make a verbatim report in shorthand of the evidence in said cause and upon their motion the court administered an oath to the said Stephen P. Carboy, as required by law, requiring him to make a fair and impartial report of all the evidence in said cause and the said reporter was directed by the court to and did take down in shorthand all the evidence given in said cause and noted the proceedings of court in respect to the admission or rejection of evidence and the objections and exceptions of counsel respecitively thereto, and all the said evidence so given with the rulings of the court and objections and exceptions of

counsel appear and are fully set forth in the said reporter's longhand report of the same, which is filed herewith and attached hereto and made a part of this bill of exceptions, and the same is in the words following, to wit:

147 *Stenographer's Longhand Report of Evidence.*

STATE OF INDIANA, } ss:
Porter County, }

In the Porter Circuit Court, to the October Term, 1895.

CALUMET CANAL AND IMPROVEMENT COMPANY }
vs. }
CHARLES B. ALEXANDER ET AL. }

Reporter's certificate.

Be it remembered that on the — judicial day of the October term, 1895, of the Porter circuit court, the same being the — day of November, 1895, Stephen P. Corboy was employed by the parties hereto to make a verbatim report of the evidence in said cause and upon their motion the said Stephen P. Corboy was sworn by the court to make a fair and impartial report of the evidence in said cause and he was there directed by the court to and did correctly take down in shorthand the evidence given in said cause and did correctly note the proceedings of court in respect to the admission or rejection of evidence and the objections and exceptions of counsel respectively thereto; and said reporter has, at the request of the said defendants Annie R. Kean and Henry B. Mason, transcribed his shorthand notes, taken as aforesaid, into longhand and the longhand manuscript of the said shorthand notes taken on the trial of said cause, as aforesaid, is as follows:

148 And the plaintiff, in order to sustain the issues on his behalf introduced the following evidence:

Plats Offered in Evidence.

Mr. JOHNSTON: The first evidence we desire to offer is the Government survey and field-notes and plats. I first offer plat of township 37, range 9.

Objection to Plats.

Mr. MCMAHAN: On behalf of the defendant Mason I object to the introduction of the plat in so far as it affects sections 12, 13 and 24. I don't object to the one in range 10.

Mr. JOHNSTON: It is range 9 you don't object to.

Mr. MCMAHAN: It is range 10 I want to object to.

Mr. JOHNSTON: We offer in evidence plat of township 37 range 10.

Mr. MCMAHAN: On behalf of the defendant Henry B. Masen I object in so far as sections 12, 13 and 24 are concerned for the reason

that the land is unsurveyed; the land was not surveyed. There is no survey from which a plat could be made; and for the further reason that it is not a certified copy of an original record, but it is a certified copy of a copy; and for the further reason that the surveyor is not the proper custodian of the record.

Mr. JOHNSTON: If the objection is made I will offer another plat, your honor.

Mr. MCMAHAN: There are no field-notes with it.

Mr. JOHNSTON: There are field-notes attached to it.

Mr. FENNELL: I object on behalf of defendant Kean for the reason it does not purport to be a copy. It is a copy of the field-notes; it does not certify that it is a copy of the plat.

COURT: Let me see the papers. I cannot tell without an inspection of those papers what they do purport.

(The papers were handed to the court.)

Mr. JOHNSTON: I now offer in evidence this plat—certified to by George W. Fisher.

Mr. FENNELL: I object to that. It is not certified to by the proper officer.

Mr. JOHNSTON: All objections to the introduction of our field-notes and plats are withdrawn and they go in evidence. All objections to this map here, they have waived in so far as the certificates are concerned.

149 *Obj. to Plats.*

Mr. MCMAHAN: In so far as the legality of both plats are concerned that is still a question. My objection is to remain to the plat. It shows on its face that the land is unsurveyed.

Mr. JOHNSTON: I introduce these plat and field-notes in evidence.

The plats and field-notes were marked as Exhibits A, B, C, and D, and G, were respectively introduced and read in evidence and are as follows:

(Here follows map marked page 150.)

151 & 152 EXHIBIT B.

Field-notes.

T. 37 N., R. 10 W., 2nd mer., Inda.

South boundary—var., 6 d. 10′ E.

West. On S. boundary of sec. 36.
40.00 Set qr. sec. post from which
A. Y. oak 10 in. dia. brs. N. 52 E. 42 lks. &
A. Y. " 14 in. dia. brs. N. 23 W. 67 lks.
67.28 to State line 1,870 lks. S. of 153 r. mile post and set post from which
A. W. oak 9 in. dia. brs. N. 29 E. 115 lks.
A. W. oak 10 in. dia. brs. N. 59 E. 160 lks.
Land level and poor, timber oak.

FOLD OUT IS TOO LARGE TO BE FILMED

East boundary—var., 6 d. 25 E.

North. On east boundary of sec. 36
40.00 Set *or.* sec. post from which
a W. oak 10 in. dia. brs. S. 29 W. 97 lks. &
A. Y. oak 10 in. dia. brs. N. 6½ W. 28 lks.
52.86 Set post on right hand of Grand Calumic
R. crs. S. E. from which
A. Y. oak 24 in. dia. brs. S. 49 E. 87 lks. &
A. Y. oak 10 in. dia. brs. S. 77 W. 123 lks.
68.94 Set post on left bank of river from which
A. Y. oak 12 in. dia. brs. N. 71 E. 251 lks. &
A. Y. oak, 18 in. dia. brs. N. 55 E. 258 lks.
80.00 Set post cor. to secs. 25 & 36 from which
A. W. oak 12 in. dia. brs. S. 31 W. 41 lks. &
A. W. oak, 14 in. dia. brs. N. 25 W. 46 lks.
Land level and poor, timber oak, marsh about stream.
153

North. On E. boundary of section 25.
40.00 Set qr. sec. post from which
A. Y. oak 9 in. dia. brs. S. 6 W. 295 lks. &
A. Y. oak 12 in. dia. brs. N. 16 W. 73 lks.
58.19 A. W. oak 12 in.
80.00 Set post cor. to secs. 24 & 25 from which
A. Y. oak 18 in. dia. brs. S. 5 W. 192 lks. &
A. Y. oak 9 in. dia. brs. S. 60 W. 124 lks.
Land gently rolling; soil poor; timber oak.
North. On E. boundary of section 24
19.00 Enter marsh.
24.50 Set post on S. margin of lake from which
A. W. oak 10 in. dia. brs. W. 790 lks. & no other
40.00 *Or.* sec. post in lake
80.00 Cor. to secs. 13 & 24 in lake
Land &c. same S. of lake.
North. On E. boundary of sec. 13
40.00 *Or.* sec. post in lake
80.00 Cor. to sec. 12 & 13 in lake—all lake
North. On E. boundary of sec. 12
30.95 Set post on N. margin of lake from wh.
a mayple 3 in. dia. brs. N. 26 E. 21 lks. &
a lynn 6 in. dia. brs. N. 61 W. 17 lks.
40.00 Qr. sec. post in deep water
80.00 Set post cor. to secs. 1 & 12 from which
A. Y. oak 6 in. dia. brs. N. 62½ E. 720 and no other. Land level and marshy about lake, Timber a few oaks (scattering) in places.
North. On E. boundary of section 1
35.00 Leave wet prairie.
40.00 Set *or.* section post from which
A. Y. oak 9 in. dia. brs. N. 17 W. 4 lks. &
A. Y. oak 12 in. dia. brs. S. 7 W. 211 lks.

154 *Field-notes, Old Survey.*

T. 37 N., R. 10 W., 2nd mer., Indiana.

76.25 Set post on margin of Lake Michigan.
A. Y. oak 10 in. dia. brs. N. 53 W. 58 lks. &
A. W. oak 18 in. dia. brs. S. 9 E. 82 lks.
Land level and poor, S. ½ mostly wet prairie.
N. ½ sandy, timber oak—M'ch 4, 1834.

North boundary—var., 6 d. 10′ E.

West. On S. boundary of sec. 36, T. 38 N. R. 10 W.
Began in border of Lake Michigan, 3.75 lks. N. and
396 lks. W. from where meander post is set
On east boundary of sec. 1 T. 36 N. R. 10 W.
On Lake Michigan.
Set at beginning from which A. Y. oak 14 in. dia. brs. S.
49 E. 196 lks. and no other.
10.31 Set post on margin of small lake
An aspen 9 in. dia. brs. N. 18 E. 140 lks. &
and aspen 9 in. dia. brs. S. 29 E. 41 lks.
21.30 Set post on W. side of lake from which
A. Y. oak 9 in. dia. brs. N. 86 E. 413 lks.
a willow 3 in. dia. brs. S. 80 E. 127 lks.
47.00 Leave marsh.
55.00 Enter marsh.
65.50 To State line & set post 28.57 lks. S. of
159 mile post in deep water.
No mound, land flat and poor, timber oak, &c.
SYLVESTER SIBLEY, *W. S.*

T. 37 N., R. 10 W., 2nd mer., Indiana.

Subdivision—var. 6 d. 25′ E.

West. Between secs. 25 & 36.
10.00 Intersects Claumic marsh.
37.50 To left bank of river and set post.
A. W. oak 20 in. dia. brs. N. ½ E. 270 & no other.
38.50 To main channel of river.

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40.00 Set qr. sec. post in river
41.00 Over river
51.00 Set meander post on right bank of lake of
river from which
A. W. oak 12 in. dia. brs. S. 4 W. 203 lks. &
68.12 To State line and set post from which
A. W. oak 30 in. dia. brs. N. 2½ E. 209 lks. and no other.
East ½ poor barren W. ½ & W. of river W. oak openings.
West. Between secs. 24 & 25
24.77 An elm 6 in. dia.

40.00 Set qr. sec. post from which
A. Y. oak 4 in. dia. brs. N. 53 N. 18 lks. &
A. Y. oak 4 in. dia. brs. S. 74 E. 9 lks.
67.00 To State line 21.23 lks. S. of 155th mile post
Set post cors. to secs. 24 & 25 from which
A. W. oak 12 in. dia. brs. S. 26 E. 58 lks. &
A. W. oak 12 in. dia. brs. N. 65 E. 55 lks.
E. ½ thick timber W. oak, lynn, poplar W. walnut elm &c. W. ½ marsh & barren 2nd-rate soil.
West. Between secs. 13 & 24
18.36 Leave lake in marsh and set post
No mound or bearings
23.36 Across marsh, intersects lake and set meander.
Post no bearings.
Space between these lakes marsh and beaver dam.

FEB. 19, 1836.

North. Between secs. 12 & 13 from cor. S secs. 12 & 13 & set meander post.
18.25 To lake of State line & set post
A sycamore 6 in. dia. brs. S. 35 E. 45 lks.
West. Between secs. 1 & 12
20.00 To lake and set meander post, no bearings
51.00 Over and set post in marsh " "
66.58 To State line and set post in marsh.

156 Meanders of lake on State line from post on N. boundary, thence on west side.

Courses.	Chs. Lks.	Remark.
S. 14 W.	50.00	In section 1
S. 51 W.	15.00	
S. 33 W.	10.00	
S. 38 W.	5.00	
S. 16 W.	10.19	To post in line between secs. 1 & 12
S. 15 W.	13.00	In sec. 12
S. 41 W.	20.52	To ash meander post in State line thence from post on State line at S. end of lake & on E. side
S. 72 E.	20.00	In sec. 24
N. 72 E.	20.00	
N. 21 E.	15.40	To line between secs. 13 & 24
N. 16 E.	25.00	In sec. 13
N. 6. W.	53.00	
N. 36½ E.	3.75	Line between secs. 12 & 13
N. 1½ W.	80.25	In sec. 12 & to line between sec. 1 & 12
N. 41 W.	16.00	In sec. 1
N. 25 E.	32.00	
North	15.00	
N. 28 E.	13.00	
N. 5 E.	12.50	To N. boundary.

157 Meanders of lake on range line commencing at post cors. to secs. 12 & 13 at N. end of lake, thence along W. margin.

Courses.	Chs. Lks.	Remarks.
S. 8 W.	45.00	In sec. 13
S. 24 W.	26.00	
S. 4 W.	11.55	Line between sections 13 & 24
S. 14 E.	48.00	In section 24
S. 45 E.	9.30	To range line at S. end of lake

Meanders of Lake Michigan from post on N. boundary at N. E. cor. of township.

S. 38 E.	5.00	To post on range line in sec. 1

Meanders of Grand Calumic river omitted.

GEO. W. T.

The foregoing field-notes are truly copied from the maps. Original scraps.

SAMUEL MORRISON.

158 *Field-notes, Old Survey.*

STATE OF INDIANA, }
Lake County. }

OFFICE OF COUNTY SURVEYOR.

I do hereby certify that the foregoing is a full, true and complete copy of the Government field-notes for township No. 37 N. range 10 west of 2nd meridian Ind. (exceptions noted) as the same appears from the copy of same on file in my office and of which I am the legal custodian.

[SEAL.]

GEO. W. FISHER,
Co. Surveyor of Lake County, Ind.

(Here follows map marked page 159.)

160 & 161 EXHIBIT "D."

Field-notes.

Township 37 N., R. 9 W., 2nd mer., Ind.

West boundary.

North. On E. boundary of sec. 25 T. 37 N. R. 10 W.
40.00 Set qr. sec. post from which
A. Y. oak 9 in. dia. brs. S. 6 W. 295 chs. &
A. Y. " 12 in. dia. brs. N. 16 W. 73 "
58.19 A. W. " 12 " "
80.00 Set posts cor. to secs. 24 & 25 from which
A. Y. oak 18 in. dia. brs. S. 5 W. 192 chs. &
A. Y. oak 9 in. dia. brs. S. 60 W. 124 chs.
Land gently rolling, soil poor, timber oak.

No. 47
Kean
v.
Canal Co

FOLD OUT IS TOO LARGE TO BE FILMED

Land in long lake very deep.

North. On E. boundary of sec. 24 T. 37 N. R. 10 W.
19.00 Enter marsh.
24.50 Set post on S. margin of lake from which
A. W. oak 10 in. dia. brs. W. 790 lks. No. other.
40.00 Or. sec. cor. in lake.
80.00 Cor. to secs. 13 & 24 in lake.
Land & C. much the same S. of lake.
North. On E. boundary of sec. 13 T. 37 N. R. 10 W.
40.00 Or sec. post in lake.
80.00 Cor. to secs. 12 and 13 in lake.
Land all lake.
North. On E. boundary of sec. 12 T. 37 N. R. 10 W.
30.95 Set post on N. margin of lake from which
a maple 3 in. dia. brs. N. 26 E. 21 lks. &
a lynn 6 " " " N. 61 W. 12 "

162

Tp. 37 N., R. 9 W., 2nd mer., Ind.

40.00 Qr. post cor. to secs. 1 & 12 from which
A. Y. oak 6 in. dia. brs. N. 62½ E. 720 lks. and no other
Land level & mostly marsh about lake. Timber scattering oak &c.

Subdivision.

West. On random between 19 & 30.
75.25 To W. boundary 246 lks. N. of post
All lake & marsh except 4 chs. on W. end.
East. Corrected between secs. 19 & 30.
35.55 Set qr. sec. post in lake.
75.55 Sec. cor.
North. Between secs. 19 & 20.
40.00 Set qr. sec. post in marsh from which
a birch 6 in. dia. brs. S. 10 E. 54 lks. &
a " 8 " " " N. 3 W. 25 "
80.00 Set post cor. to secs. 18, 18, 19 & 20 from which
a birch 10 in. dia. brs. S. 8 E. 39 lks. &
q " 10 " " " N. 27 E. 27 "
Lake and marsh under water.
West. Between secs. 18 & 19.
22.50 To long lake & set post from which
a birch 4 in. dia. brs. N. 56 E. 41 lks. & no other.
The entire line is marsh or lake. Jan. 27th 1835.

163

Tp. 37 N., R. 9 W., 2nd mer., Ind.

North. Between secs. 17 & 18.
40.00 Set qr. post in lake very deep water.
78.00 Enter barrens.
80.00 Set post cors. to secs. 7, 8, 17 & 18 in a point of barrens from which
A. Y. oak 5 in. dia. S. 58 E. 53 lks. &
A. W. " 14 " " N. 57 W. 96 "
Land in long lake very deep.

West.		Between secs. 7 & 18.
2.00		Enter marsh under water.
35.00		To lake and set post in marsh & water.
		No mound or bearings. Land all marsh and under water.

Meanders of small lake beginning at meander post in W. boundary, thence along E. end of lake.

S. 74 E.	13.00	In sec. 19
N. 38 E.	55.00	
N. 15 E.	13.00	
N. 35½ E.	7.00	Line between secs. 18 & 19.
N. & W.	55.00	In sec. 18.
N. 11 E.	22.00	
West	5.00	
N. 64 W.	9.70	Line between secs. 7 & 18.
N. 23 E.	25.00	In sec. 7.
N. 60 W.	19.00	
S. 56 W.	19.00	
S. 39 W.	28.40	To post on W. boundary at N. end of lake.

ANDREW BURNSIDE, *Dept. Sur.*

Jan. 30, 1835.
No certifi-ate.

164 I do hereby certify that the above and foregoing is full, true, & complete copy of the Government field-notes of tp. 37, N. range 9 W. 2nd mer. Ind. as regards secs. 18 and 19 in said township, as the same appears on the record in my office and of which I am the legal custodian.

GEO. W. FISHER,
Co. Surv. of Lake Co., Indiana.

June 13, 1895.

[SEAL.]

(Here follows map marked p. 165.)

166 & 167 Mr. JOHNSON: I next offer in evidence stipulations between the parties.

The stipulations were marked Exhibits "A" and "B" and were read in evidence, and the same are in the words and figures following, to wit:

FOLD OUT IS TOO LARGE TO BE FILMED

copie

And in case of appeal to the Supreme Court the entries in said

EXHIBITS "A" AND "B."

168 EXHIBIT A.

Stipulation to Use Abstract of Title in Evidence.

Agreement.

Lake Circuit Court, April Term, 1895.

Taken on change to Porter county.

CALUMET CANAL & IMPROVEMENT COMPANY
vs.
CHARLES B. ALEXANDER, HENRY B. MASON, MRS. HENRY B. Mason, *Amma* R. Kean, Samuel A. Kean.

It is hereby agreed between the parties appearing to this action that the entries in the abstract of the plaintiff and the entries in the abstract of defendants or any continuance thereof, shall at the trial of this cause be taken as evidence of the title of the parties the same as if the original instrument of conveyance patents, judgments and certified copies thereof were introduced in evidence.

Crown Point, May 21, 1895.

WILLIAM JOHNSON,
Pl'ff's Att'y.
THOS. J. WOOD,
Att'y for Kean & Kean.
W. C. McMAHAN,
Att'y for Mason & Mason.

169 EXHIBIT B.

Agreement.

STATE OF INDIANA, } ss:
County of Porter, }

In the Porter Circuit Court, October Term, 1895.

CALUMET CANAL AND IMPROVEMENT COMPANY
vs.
CHARLES B. ALEXANDER ET AL.

It is hereby agreed between the plaintiff and the defendants represented by W. P. Fennell that the entries in the abstract of plaintiff and the entries in the abstract of defendants or any continuation of said abstracts shall at the trial of this cause be taken as evidence of the title of the parties to the land in controversy the same as if the original instruments of conveyance, patents, judgments, certified copies thereof and proof of heirship were introduced in evidence. And in case of appeal to the Supreme Court the entries in said

abstract may be taken as and for the original instruments referred to or certified copies thereof.

Valparaiso, Ind., Sept. 26, 1895.

WILLIAM O. JOHNSON,
WILLIAM JOHNSTON,
Att'ys for Pl'ff.
WILLIAM P. FENNELL.

On behalf of defendant Henry B. Mason, I hereby agree and consent to the above.

W. C. McMAHAN,
Att'y for Mason.

170 *Special Entries in Abstract of Plaintiff.*

Mr. JOHNSTON: I next offer in evidence an entry from our abstract. United States to State of Indiana. Letters patent, dated March 24, 1853, grants and conveys whole of sections 15 and 17 etc. sections 12, 13, and 24, all in township 37, N. R. 10 W. with other lands.

Patent U. S. to State of Indiana.

Mr. McMAHAN: The defendant Mason objects to the introduction of the letters patent in evidence for the reason that it affects sections 12, 13 and 24 in range 10—for the reason that the land at the time was unsurveyed and the Government could not sell any unsurveyed land.

The court overruled the objection and permitted the entry concerning letters patent to be read in evidence, to which ruling of the court the defendant Mason at the time excepted.

And thereupon the entry from the abstract in relation to the letters patent was read in evidence and the same is in the words and figures following:

Patent.

United States
to
State of Indiana.

Letters patent, dated March 24, 1853, grants and conveys the whole of sections 15 and 17; the whole of fractional sections 18 and 19; the whole of sections 20, 21 and 22; the whole of sections 27, 28 and 29; the whole of fractional sections 12, 13 and 24, all in T. 37 N. R. 10 W. (with other lands) in the Winnamac Ind. land district according to the official plats of survey of the said lands returned to the General Land Office by the surveyor general, made in accordance with the act of Congress approved Sept. 28, 1850, entitled "An act to enable the State of Arkansas and other States to reclaim the swamp lands within their limits." Sets forth that said lands have been selected as "swamp and overflowed lands" enuring to the said State under the act aforesaid, and for which the gov-

ernor of said State of Indiana did, on Dec. 18, 1852, request a patent to be issued to the said State. On file in auditor of State's office.

171-251 *State of Indiana to Geo. W. Clark.*

Mr. JOHNSTON: I next offer in evidence entry 110 of our abstract, certificate of purchase—State of Indiana, by Janna S. Holton, to George W. Clark.

COURT: Cannot you stipulate that you put in the abstract in evidence and either side shall be at liberty to put in so much of it as they want in evidence. Either side can insist when the record is made up to put in any entry he wants to.

Mr. MCMAHAN: There are one or two deeds I want to object to.

COURT: If you have any objection to any conveyance in the abstract you will raise it by specific objection. The abstract will be treated in evidence.

And thereupon the abstract was read in evidence and the same is hereto annexed and — a part hereof and is as follows, to wit:—

* * * * * * *

252 *Offer Entries 436 to 444 of Abstract.*

Mr. JOHNSTON: I want to introduce specifically entries 436 to 444 inclusive of the abstract. And the first statement of entry No. 7 and the first statement of entry No. 6.

The entries were read in evidence and are as follows:

253 (*Entry No. 6.*)

Additional tax sales.

Tax-sale entry 436.

20 acres of N. W. ¼, N. W. ¼, sec. 30, T. 37, R. 9,—40 acres, sold Jan'y 7, 1856, to G. W. Lawrence, for $1.69, amount of taxes returned delinquent in name of Henry Obenauer for 1854 and 1855.

Entry 437.

S. W. ¼, N. E. ¼, sec. 30, T. 37, R. 9,—40 acres, sold Jan'y 2, 1860, to George Earle & Son, for $2.50, amount of taxes returned delinquent in name of Henry Brooks for 1858 and 1859.

Entry 438.

E. ½, N. W. ¼, sec. 30, T. 37, R. 9,—80 acres, sold Feb'y 2, 1863, to E. W. Hohman for $5.43, amount of taxes returned delinquent in name of H. G. Loomis & D. Hess for 1861 and 1862. The record says, in pencil, "Sale an error; the del. tax was paid from del. list."

Entry 439.

S. W. ¼, N. E. ¼, sec. 28, T. 37, R. 9,—40 acres, sold Feb'y 1, 1864, to Janna S. Holton, for $2.62, amount of taxes returned delinquent

in name of Law, Schwartz & Co., for 1862 and 1863. Certificate dated March 7, 1864. The record says in pencil, "Hohman says the del. tax is paid."

Entry 440.

Frac. N. E. ¼ & E. ½ S. E. ¼, sec. 16, T. 37, R. 9,—167 acres, sold Feb'y 5, 1866, to Amos Allman, for $50.25, amount of taxes returned delinquent in name of George W. Clarke for 1864 & 1865. Certificate dated Feb'y 6, 1866.

Entry 441.

10 acres of lot 4, N. W. ¼, S. W. ¼, sec. 35, T. 37, R. 9,—42.60 acres, 5 acres of frac. S. riv., S. W. ¼ sec. 35, T. 37, R. 9,—29.80 acres, sold Feb'y 4, 1867, W. H. Rifenburg for $11.11, amount of taxes returned delinquent in name of Jessee L. Watson for 1865 and 1866. Certificate dated Feb'y 28, 1867. First piece deeded to John G. Earle, Jan'y 6, 1870. (See No. 386 of abstract for tax deed.)

Entry 442.

N. E. ¼, N. W. ¼, sec. 30, T. 37, R. 9,—40 acres, sold Feb'y 3, 1868, to Jacob Forsythe for $10.34, amount of taxes returned delinquent in name of C. G. Wicker for 1866 and 1867. Certificate dated Feb'y 7, 1868.

254 Entry 443.

Lot 4 & frac. S. W. ¼, sec. 35, T. 37, R. 9,—72.40 acres, sold Feb'y 1, 1869, to John G. Earle for $8.20, amount of taxes returned delinquent in name of G. W. Morris for 1867 and 1868. Certificate dated Feb'y 2, 1869.

Entry 444.

The *lis pendens* records in the clerk's office do not show any additional liens filed against the premises described in the caption of abstract.

255 *W. Deed. Cal. Canal & Imp. Co. to Chi. Ter. R. R. Co. First Part of Entry.*

The Calumet Canal and Improvement Company, a corporation duly organized under the laws of the State of Indiana, and having its principal office in the city of Chicago, Cook county, Ill.,

to

The Chicago and Calumet Terminal Railway Company, a corporation organized under the laws of the State of Illinois.

Warranty deed, Oct. 28, 1889, conveys a tract of land situated in the N. E ¼ S. E. ¼ sec. 30, T. 37, N., R. (W. of the 2nd P. M. and described as follows: Beginning at a point on the east line of said section 30, that is distant $54\frac{8}{10}$ feet southerly from the northeast corner of said N. E. ¼ S. E. ¼; thence southwesterly on a curve convex to the southeast, and having a radius of $1{,}587\frac{3}{10}$ feet, a distance of

$1,236\frac{4}{10}$ feet to a point on the north boundary line of the right of way of the State line and Indiana City railway, that is distant 1,055.84 feet westerly from the point of intersection of said north boundary line with the said east line of section 30; thence northeasterly in a straight line along the said north boundary line, a distance of 1,055.84 feet to the said east line of section 30; thence northerly along said east line of section 30, a distance of 555 feet to place of beginning, as indicated by red color on attached plat, containing 4.48 acres, in Lake Co., Ind., for the sum of $1,175. Signed by Joseph T. Torrence, president, and Robert E. Tod, secretary, and seal of company attached. Acknowledged regularly before Marshall Lapham, notary public, in Cook Co., Ill. Recorded Nov. 2, 1889, in Book No. 49, pages 23 & 24.

(Map omitted.)

NOTE.—No further search made on this land.

256 *Dedication to Public.*

(First part of entry No. 7.)

The Standard Steel and Iron Company & the Calumet Canal and Improvement Company, corporations duly organized, by Joseph T. Torrence, president, and Robert E. Tod, secretary, and seals of both companies attached, and R. Clarke Forsyth (unmarried) and George H. Helberg (unmarried)
to
The Public.

Dedication dated March 10, 1890.

Whereas, the undersigned are desirous of laying out and establishing a public highway in said county along the route hereinafter described, and are severally the owners of all the tracts and parcels of land over which said highway will pass, therefore they hereby donate, convey and dedicate to the public as and for a public highway, but so long only as the same shall be used as such highway, a strip of land 90 feet in width, the center line of which is described as follows: Commencing at the southwest corner of the S. E. ¼, sec. 20, T. 37 N., R. 9 W. of the 2nd P. M., running thence north along the half-section line, through sections 20 and 17 to the southwest corner of the N. W. ¼ N. E. ¼ of sec. 17 of said T. and R. to have and to hold the same for the use of a public highway, but for no other purpose, subject however to the rights of way of all railroads and waterways heretofore given or conveyed. Acknowledged regularly before Marshall Lapham, a notary public, in Cook Co., Ill. Recorded March 11, 1890, in Miscellaneous Record No. 7, pages 176 & 177.

257 *Offer of Deed, Forsyth to Green.*

Mr. JOHNSTON: I next offer in evidence a certified copy of a warranty deed from Caroline M. Forsyth to William W. Green, dated Nov. 10, 1881.

Objection.

Defendant Mason objects to the introduction of the deed on the ground that it is not properly certified and in so far as it affects the title to sections 12, 13 and 24 in range 10 for the reason that the land has never been surveyed.

The court overruled the objection to the introduction of the certified copy of the above deed, to which ruling of the court the defendant Mason at the time excepts.

And thereupon the plaintiff read in evidence the certified copy of the deed from Caroline M. Forsyth to William W. Green, which certified copy is as follows:

Deed, Forsyth to Green.

Caroline M. Forsythe to Wm. W. Green. } W. D.

This indenture, made this tenth (10th) day of November in the year of our Lord, one thousand, eight hundred and eighty-one (1881) between Caroline M. and Jacob Forsythe, her husband, of North township, in the county of Lake and State of Indiana, parties of the first part, and William W. Green of Palisades township, in the county of Bergen and State of New Jersey.

Witnesseth. That the said parties of the first part for and in consideration of the sum of one million dollars ($1,000,000.00) in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged and the said party of the second part forever released and discharged therefrom, have granted, bargained, sold, remised, released, conveyed, aliened and confirmed and by these presents do grant, bargain, sell, remise, release, convey, alien and confirm unto the said party of the second part, and to his heirs and assigns forever all the following-described lots, pieces or parcels of land, situate in the county of Lake and State of Indiana and known and described as follows, to wit: The west half of the southwest quarter of section six (6), the northwest quarter of the northwest quarter and the south half of the southwest quarter and the southwest quarter of the northeast quarter and lots one (1), two (2), three (3) and four (4) in the south half of section seven (7), the west half of the southwest quarter of section eight (8), the northeast fractional quarter, the east half of the southeast quarter
258 the east half of the northwest quarter and the west half of the southwest quarter of section sixteen (16) lots one (1) and two (2) fractional southwest quarter of section 15, the north half (except the southeast quarter of the northwest quarter and the south half except the northeast quarter of the southwest quarter) of section seventeen (17) lots three (3) and four (4) of the southeast fractional quarter of section eighteen (18), all of fractional section nineteen (19), all of section twenty (20), all of section twenty-one (21), all of section twenty-two (22), all of sections twenty-seven (27)

twenty-eight (28), and twenty-nine (29), the northeast quarter of the north half of the northwest quarter, and the north half of the southeast quarter, and the southeast quarter of the southeast quarter of section thirty (30), all of section thirty-two (32), north of the river (except the west half of the northwest quarter and the northwest quarter of the northeast quarter), and the north half and the south half, north of the river of section thirty-three (33), and the north half and all of the south half of section thirty-four (34), north of the river, the west fractional half, including the fraction south of the river, of the southwest quarter of section thirty-five (35), all in township thirty-seven (37), north, range nine (9) west of second 2nd principal meridian, also lots two (2) and three (3) and all of lot one (1) (except five and $\frac{82}{100}$ acres heretofore conveyed to E. A. and C. B. Shedd and except the strip of land lying between the rights of way of the Pittsburg, Fort Wayne and Chicago railroad, and of the Lake Shore and Michigan Southern railroad, containing about two acres heretofore conveyed to John Kreuter) in the northeast quarter and the southeast fractional quarter of section one (1), lots one (1), two (2), three (3), and four (4) in section twelve (12), lots one (1) and two (2) in section thirteen (13), lots two (2) and three (3), and the southeast quarter of the southeast quarter and the west half of the north half of the southwest quarter of section twenty-four, all in township thirty-seven (37) north, range ten west of 2nd P. M., containing in all eight thousand acres more or less: also the east half of the southwest quarter, and the west half of the southeast quarter of section sixteen (16), township thirty-seven (37), north range nine (9) west of 2nd P. M. Excepting however from this conveyance the north one hundred and sixty (160) acres of the following-described tract, commencing at a point on the east line of the Indiana boulevard where the center line of section twenty (20) in
259 township thirty-seven (37) north, range nine (9) west, intersects the same running thence east along said centre line to the quarter post, on the east line of said section twenty (20) thence southeasterly in a straight line to the southeast corner of the north half of the northwest quarter of section twenty-eight (28), in the township and range last aforesaid, thence west on the south line of said north half of said northwest quarter of section twenty-eight (28) to the east line of said Indiana boulevard, thence northwesterly along the easterly line of said boulevard to the point or place of beginning, the south line of said one hundred and sixty (160) acres hereby excepted to be parallel with the south line of said last described tract. This conveyance is made subject to existing highways and railroad rights of way, upon and across various portions of said lands, together with all and singular, the hereditaments and appurtenances thereunto belonging or in anywise appertaining the accretions, water, lake-bed rights and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, claim or demand whatsoever of the said parties of the first part either in law or equity, of, in and to the above-bargained premises, with the hereditaments and appurtenances, to have and to hold the said premises above bargained and

described with the appurtenances unto the said party of the second part, his heirs and assigns forever. And the said parties of the first part, for themselves their heirs, executors and administrators do covenant, grant, bargain and agree to and with the said party of the second part, his heirs and assigns that at the time of the ensealing and delivery of these presents the said Caroline M. Forsythe is well seized of the premises above conveyed, as of a good, sure, perfect absolute and indefeasible estate of inheritance in law, in fee-simple and hath good right, full power, and lawful authority to grant, bargain, sell and convey the same in manner and form aforesaid, and that the same are free and clear of and from all other grants, bargains, sales, liens, taxes, assessments and incumbrances of what kind or nature soever. And the said parties of the first part, do further covenant and agree that they, their heirs, and each of them and all and every other person or persons whosoever lawfully or equitably deriving any estate, right, title, or interest, of, in, or to the above-granted premises, by, from, under or in trust for them, or either of them, shall and will at any time or times hereafter upon the reasonable request and at the proper costs, and charges in the
260 law of the said party of the second part, his heirs and assigns, make, do and execute, or cause or procure to be made, done and executed all, and every such further and other lawful, and reasonable acts, conveyances and assurances in the law, for the better and more effectually vesting and confirming the premises hereby granted, or intended so to be, in and to the said party of the second part, his heirs and assigns forever, as by the said party of the second part, his heirs or assigns or his, or their counsel learned in the law, shall be reasonable desired, advised or required, and the above-bargained premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns against all and every person or persons lawfully claiming, or to claim the whole or any part thereof the said parties of the first part shall and will warrant and forever defend.

And the said parties of the first part and each of them hereby expressly waive and release any and all right, benefit, privilege, advantage and exemption under and by virtue of any and all statutes of the State of Indiana, providing for the exemption of homesteads from sale or execution or otherwise.

In witness whereof the said parties of the first part have hereunto set their hands and seals, the day and year first above written.

CAROLINE M. FORSYTHE. [SEAL.]
JACOB FORSYTHE. [SEAL.]

STATE OF INDIANA, } ss:
Lake County, }

I, Amos Allman, a notary public in and for said county of Lake and State of Indiana, do hereby certify that Caroline M. Forsythe and Jacob Forsythe, her husband, personally known to me as the same persons, whose names are subscribed to the foregoing deed, appeared before me this day in person and each acknowledged that she or he signed, sealed and delivered the said deed as her or his

free and voluntary act for the uses and purposes therein set forth and thereby conveyed all right, title and interest of each and both of them in, and to the premises described in said deed and expressly waived and released all right, claim, privilege, benefit, advantage and exemption under any and all homestead exemption laws, so called of the State of Indiana.

Given under my hand and notarial seal, this tenth day of November A. D. 1881.

[SEAL.] AMOS ALLMAN,
Notary Public.

261 Filed for record Nov. 10th, 1881, at 1 p. m.
RICHARD W. PRICE, *Recorder.*

STATE OF INDIANA, } ss :
Lake County, }

I, John F. Krost, recorder in and for said county and State, do hereby certify that the writing contained in and on the foregoing pages is a full, true and complete copy of the record of a warranty deed as recorded in this office on the 10th day of November, 1881, in Deed Record No. 32, page 50, together with the certificate of Richard Price, then recorder of said county, as to the recording of the same, as now appears of record in this office, and of which record I am now the custodian.

Witness my hand and official seal, this 9th day of August, 1895.

[SEAL.] JOHN F. KROST,
Recorder of Lake Co.

32–50–3.

Offer of Deed, Green to E. Chi. Imp. Co.

The plaintiff next offered and read in evidence a certified copy of a deed from William W. Green to the East Chicago Improvement Company, dated December 13, 1881, which certified copy is as follows:

262 *Deed, Green to E. Chic. Imp. Co.*

Wm. W. Green
to
East Chicago Improvement Company. } Q. C. D.

This indenture, witnesseth, that the grantor, William W. Green, a bachelor of Palisades township, in the county of Bergen and State of New Jersey, for the consideration of ten dollars conveys and quit-claims to the East Chicago Improvement Company, a corporation created and existing under the laws of the State of New Jersey, all interest in the following-described real estate situated in the county of Lake, in the State of Indiana, to wit: Lot four (4) and the fraction south of the river, both in the southwest quarter of section thirty-five (35) in township thirty-seven (37) north of range nine (9) west of the second principal meridian, containing seventy-two and forty one-hundredths (72.40) acres more or less.

Together with all and singular the heréditaments and appurtenances, the accretions, water and lake-bed rights, the reversion and reversions, remainder and remainders, the rents, issues and profits, in anywise appertaining or belonging to said lot four (4) and to said fraction south of the river, and also to each and every, and all the premises heretofore conveyed by the grantor herein to the grantee herein, by deed dated November tenth (10th) A. D. 1881 and recorded said November 10th A. D. 1881 in the recorder's office of Lake county, Indiana, in Book 32 of Deeds, pages 54 to 56; hereby releasing and waiving all rights under and by virtue of the homestead-exemption laws of the State of Indiana.

Dated this twelfth day of December A. D. 1881.

WILLIAM W. GREEN. [SEAL.]

263 STATE OF NEW YORK, } ss:
County of New York, }

I, Allen McCulloh, a notary public, in and for said county and State aforesaid do hereby certify, that William W. Green, personally known to me to be the same person whose name is subscribed to the foregoing deed, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said deed, as his free and voluntary act for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and official seal this thirteenth day of December A. D. 1881.

[SEAL.] ALLEN McCULLOH,
Notary Public (28), *New York County.*

Filed for record Dec. 19th, 1881 at 11 a. m.

RICHARD W. PRICE, *Recorder.*

STATE OF INDIANA, } ss:
Lake County, }

I, John F. Krost, recorder in and for said county and State, do hereby certify that the writing contained in and on the foregoing pages is a full, true and complete copy of the record of a quitclaim deed as recorded in this office on the 19th day of December, 1881, in Deed Record No. 32, page 146, together with the certificate of Richard W. Price then recorder of said county, as to the recording of the same, as now appears of record in this office, and of which record I am now the custodian,

Witness my hand and official seal, this 9th day of August, 1895.

[SEAL.] JOHN F. KROST,
Recorder of Lake County.

264 *Offer of I. C. Deed—Green to E. Chic. Imp. Co.*

The plaintiff next offered and read in evidence a quitclaim deed from William W. Green to the East Chicago Improvement Company, dated Nov. 10, 1881, which deed is duly certified to and is in the words and figures following:

Deed—Green to E. Chi. Imp. Co.

William W. Green
to
East Chicago Improvement Co.

This indenture witnesseth, that the grantors, William W. Green, a bachelor of Palisades township, in the county of Bergen and State of New Jersey, for and in consideration of the sum of three million dollars ($3,000,000) in hand paid, quitclaims to the East Chicago Improvement Company, a corporation organized and existing under the laws of the State of New Jersey, the following-described real estate, to wit: the west half of the southwest quarter of section six (6), the northwest quarter of the northwest quarter, and the south half of the northeast quarter and the southwest quarter of the northeast quarter and lots one (1), two (2), three (3) and four (4) in the south half of section seven (7); the west half of the southwest quarter of section eight (8) the northeast fractional quarter, the east half of the southeast quarter, the east half of the northwest quarter and the west half of the southwest quarter of section sixteen (16), lots one (1) and two (2), fractional southwest quarter of section fifteen (15) the north half (except the southeast quarter of the northwest quarter) and the south half except the northeast quarter of the southwest quarter, of section seventeen (17), lots three (3) and four (4) of the southeast fractional quarter of section eighteen (18) all of fractional section nineteen (19), all of section twenty (20), all of section twenty-one (21) all of fractional section twenty-two (22), all of sections twenty-seven (27), twenty-eight (28) and twenty-nine (29), the northeast quarter, and the north half of the northwest quarter, and the north half of the southeast quarter, and the southeast quarter of the southeast quarter of section thirty (30), all of section thirty-two (32), north of the river (except the west half of the northwest quarter and the northwest quarter of the northeast quarter) the north half and the south half north of the river of section thirty-three (33), the the north half and all of the south half of section thirty-four (34) north of the river, the west fractional half, including the fraction south of the river, of the southwest quarter of section thirty-five (35), all in township thirty-seven (37) north, range nine (9) west of the second principal meridian.

Also lots two (2) and three (3) and all of lot one (1), except five and $\frac{82}{100}$ acres heretofore conveyed to E. A. and C. B. Shedd and except the strip of land lying between the rights of way of the Pittsburg, Fort Wayne and Chicago railroad and of the Lake Shore and Michigan Southern railroad, containing about two acres heretofore conveyed to John Kreuter, in the northeast quarter and the southeast fractional quarter of section one (1), lots one (1), two (2), three (3) and four (4) in section twelve (12), lots one (1) and two (2) in section thirteen (13), lots two (2) and three (3) and the southeast quarter of the southeast quarter and the west half of the north half of the southwest quarter of section twenty-four (24), all in township thirty-seven (37), north range ten (10), west of the second principal merid-

ian, containing in all eight thousand acres more or less. Also the east half of the southwest quarter and the west half of the southeast quarter of section sixteen (16), township thirty-seven (37), north, range nine (9) west of the second principal meridian, exception however from this conveyance the north one hundred and sixty (160) acres of the following-described tract, commencing at a point on the east line of Indiana boulevard where the center line of section twenty (20) in township thirty-seven (37) north range nine (9) west of the second principal meridian intersects the same, running thence east along said centre line to the quarter post on the east line of said section twenty (20) thence southeasterly in a straight line to the southeast corner of the north half of the northwest
265 quarter of section twenty-eight (28) in the township and range last aforesaid, thence west on the south line of said north half of said northwest quarter of section twenty-eight (28) to the east line of said Indiana boulevard, thence northwesterly along the easterly line of said boulevard to the point or place of beginning. The south line of said one hundred and sixty (160) acres hereby excepted, to be parallel with the south line of said last-described tract.

All of said lands being situated in the county of Lake and State of Indiana. This conveyance is made subject to existing highways and railroad rights of way, upon and across various portions of said land. And the grantor hereby releases and waives all rights under and by virtue of the homestead exemption, stay and valuation laws of the State of Indiana, and the grantor hereby assumes and agrees to pay and discharge as part of the consideration hereof the following sums of money secured upon said premises, first the sum of six hundred and sixty-six thousand, six hundred and sixty-six dollars and sixty-seven cents ($666,666.67) and interest due Caroline M. Forsythe, second the sum of *g*hree hundred and twenty-three thousand, three hundred and thirty-three dollars and thirty-three cents ($323,333.33) and interest due Charles B. Alexander, provided that this covenant as to said $666,666.67 and interest is not to be construed as one for the benefit of, or enforceable by said Caroline M. Forsythe.

Dated this 10th *tenth* day of November A. D. 1881.

[SEAL.] WILLIAM W. GREEN.

STATE OF INDIANA, } ss:
County of Lake, }

I, Amos Allman, a notary public in and for said county and State aforesaid, do hereby certify that William W. Green personally known by me to be the same person, whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act for the uses and purposes therein set forth, including the release and waiver of all rights under and by virtue of the homestead exemption, stay and valuation laws of the State of Indiana.

Given under my hand and notarial seal this 10th day of November A. D. 1881.

[SEAL.] AMOS ALLMAN,
Notary Public.

Filed for record Nov. 10th, 1881, 1.10 p. m.
RICHARD W. PRICE, *Recorder.*

266 STATE OF INDIANA, } ss:
Lake County, }

I, John F. Krost, recorder in and for said county and State, do hereby certify that the writing contained in and on the foregoing pages is a full, true and complete copy of the record of a quitclaim deed as recorded in this office on the 10th day of November, 1881, in Deed Record No. 32, page 54 together with the certificate of Richard W. Price, then recorder of said county, as to the recording of the same, as now appears of record in this office, and of which record I am now the custodian.

Witness my hand and official seal, this 9th day of August, 1895.

JOHN F. KROST,
[SEAL.] *Recorder of Lake County.*

Offer of Deed, E. Chi. Imp. Co. to Torrence.

The plaintiff next read in evidence a quitclaim deed from the East Chicago Improvement Company to Joseph T. Torrence, dated July 11, 1887, which quitclaim deed is in the words and figures following:

267 *E. Chi. Imp. Co. to Torrence.*

East Chicago Imp. Co. }
to
Joseph T. Torrence. }

This indenture, made this eleventh day of July, 1887, witnesseth, that the grantor, The East Chicago Improvement Company a corporation organized and existing under the laws of the State of New Jersey, for and in consideration of the sum of one hundred dollar-lawful money of the United States to it, in hand paid and for other good and valuable consideration-, hath quitclaimed and by these presents does quitclaim to Joseph T. Torrence of the city of Chicago, county of Cook and State of Illinois, the following-described real estate, to wit: The west half of the southwest quarter of section six (6), the northwest quarter of the northwest quarter and the south half of the northwest quarter and the southwest quarter of the northeast quarter and lots one (1), two (2), three (3) and four (4) in the south half of section seven (7), the west half of the southwest quarter of section eight (8), the northeast fractional quarter, the east half of the southeast quarter, the east half of the east half of the northwest quarter and the west half of the southwest quarter of section sixteen (16), lots one (1) and two (2), fractional southwest quarter of section fifteen (15), the north half (except the southeast quarter of the northwest quarter) and the south half (except the northeast quarter of the southwest quarter) of section seventeen (17), lots three (3), and four (4) of the southeast fractional quarter of section eigh-

teen (18), all of fractional section nineteen (19), all of section twenty (20) all of section twenty-one (21) all of fractional section twenty-two (22), all of section- twenty-seven (27), twenty-eight (28) and twenty-nine (29), the northeast quarter and the north half of the northwest quarter and the north half of the southeast quarter and the southeast quarter of the southeast quarter of section thirty (30), all of section thirty-two (32) north of the river (except the west half of the northwest quarter and the northwest quarter of the northeast quarter) the north half and the south half, north of the river, of section thirty-three (33) the north half and all of the south half of section thirty-four (34), north of the river, the west fractional half including the fraction south of the river of the southwest quarter of section thirty-five (35) all in township thirty-seven (37), north of range nine (9) west of the second principal meridian. Also lots two (2) and three (3) and all of lot one (1), except five and $\frac{87}{100}$ acres heretofore conveyed to E. A. and C. B. Shedd and except the strip of land lying between the rights of way of the Pittsburg, Fort Wayne and Chicago
268 railroad and the Lake Shore and Michigan Southern railroad containing about two (2) acres and heretofore conveyed to John Kreuter, in the northeast quarter, and the southeast fractional quarter of section one (1), lots one (1), two (2) three (3) and four (4) in section twelve (12), lots one (1) and two (2) in section thirteen (13), lots two (2) and three (3) and the southeast quarter of the southeast quarter and the west half of the north half of the southwest quarter of section twenty-four (24), all in township thirty-*p*seven (37) north, range ten (10) west of the second principal meridian, containing in all eight thousand acres more or less; also the east half of the southwest quarter and the west half of the southeast quarter of section sixteen (16), township thirty-seven (37) north, range nine (9) west of the second principal meridian, excepting, however, from this conveyance the north one hundred and sixty (160) acres of the following-described tract. Commencing at a point on the east line of the Indiana boulevard, where the centre line of section twenty (20) in township thirty-seven (37), north range nine (9) west, of the second principal meridian intersects the same, running thence east along said centre line to the quarter post on the east line of section twenty (20), thence southeasterly in a straight line to the southeast corner of the north half of the northwest quarter of section twenty-eight (28), in the township and range last aforesaid thence west on the south line of said north half of said northwest quarter of section twenty-eight (28) to the east line of said Indiana boulevard, thence northwesterly along the easterly line of said boulevard to the point or place of beginning, the south line of said one hundred and sixty (160) acres hereby excepted to be parallel with the south line of said last-described tract. All of said land being situated in the county of Lake and State of Indiana.

This conveyance is made subject to existing highways and railroad rights of way upon and across various portions of said lands, being the same property conveyed to the grantor herein by William W. Green, by deed of quitclaim, dated the tenth day of November,

1881, and recorded in the office of the recorder of Lake county, on the said tenth day of November, 1881, in Book 32 of deeds, pages 54 to 56.

It is expressly understood and agreed that this deed is made by the grantor above named without warranty express or implied. But this deed is intended to convey to the grantee therein named, all the right title and interest of the grantor, in, and to the property hereinbefore described, and in and to such other rights if any as the grantor may have.

269 In witness whereof the East Chicago Improvement Company has caused this indenture to be signed in its corporate name by its president and has caused its corporate seal to be hereunto affixed and attested by its secretary in pursuance of the resolution of its board of directors.

THE EAST CHICAGO IMPROVEMENT COMPANY,

[SEAL.] By ALFRED B. THACHER, *President.*

Attest: WILLIAM J. CAMPBELL, *Secretary.*

STATE OF NEW YORK, } ss:
City and County of New York, }

Be it remembered that on this 25th day of July, 1887, before me, Allen McCulloh, a notary public, in and for the city and county of New York, duly commissioned and qualified, personally appeared Alfred B. Thacher and William J. Campbell, the persons who executed the foregoing deed, as president and secretary of the East Chicago Improvement Company the grantor therein, being both of lawful age, and both to me personally known and known to me to be respectively such president and secretary, and they severally acknowledged to me the execution of the same, and that they executed the same as the deed of the said East Chicago Improvement Company. And they further being severally by me duly sworn did severally depose and say that they were both above the age of twenty-one years, and of sound minds and memory, and laboring under no disability so far as they severally knew, that they were well acquainted with each other, that they resided in the city, county and State of New York; that the said Alfred B. Thacher was the president and the said William J. Campbell was the secretary of the East Chicago Improvement Company, the grantor in said deed, that they knew the corporate seal of said company, that the seal annexed to said deed is such corporate seal, and was thereto affixed in their presence by the authority of the board of directors of said company and that they severally at the same time in the presence of each other signed their names as such officers by the authority.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year aforesaid.

270 [SEAL.] ALLEN McCULLOH,
Notary Public (13), *N. Y. County.*

Filed for record, July 27, 1887 at 3 p. m.

E. P. AMES, *Recorder.*

STATE OF INDIANA, } ss:
Lake County, }

I, John F. Krost, recorder in and for said county and State, do hereby certify that the writing contained in and on the foregoing pages is a full, true and complete copy of the record of a quitclaim deed as recorded in this office on the 27th day of July, 1877, in Deed Record No. 42, page 176 together with the certificate of E. P. Ames, then recorder of said county, as to the recording of the same, as now appears of record in this office, and of which record I am now the custodian.

Witness my hand and official seal, this 9th day of August, 1895.

JOHN F. KROST,
[SEAL.] *Recorder of Lake County.*

42–176.

271 *Offer of Deed, Torrence to Cal. Canal & Imp. Co.*

The plaintiff offered and read in evidence a quitclaim deed from Joseph T. Torrence to the Calumet Canal and Improvement Company, dated July 27, 1887; which quitclaim deed is as follows:

Deed, Torrence to Cal. Canal & Imp. Co.

Joseph T. Torrence
to
Cal. Can. & Imp. Co.

The grantors, Joseph T. Torrence and Libbie N. Torrence, his wife of the city of Chicago, in the county of Cook and State of Illinois, for and in consideration of one dollar, convey and quitclaim to the Calumet Canal and Improvement Company, a corporation duly organized under the laws of the State of Indiana, all interest in the following-described real estate, to wit: The west one-half of the southwest quarter of section six (6), the northwest quarter of the northwest quarter and the south half of the northwest quarter and the southeast quarter of the northeast quarter and lots one, two, three and four (1, 2, 3, 4) being the south half of section seven (7), the west half of the southwest quarter of section eight (8), the northeast fractional quarter, the southeast quarter, the east half of the northwest quarter and the southwest quarter of section sixteen (16), all of fractional section fifteen (15), the north half (except the southeast quarter of the northwest quarter) and the south half (except the northeast quarter of the southwest quarter) of section seventeen (17) lots three (3) and four (4) b-ing the southeast fractional quarter of section eighteen (18), all of fractional section nineteen (19), all of section twenty-one (21), all of fractional section twenty-two (22), the north half, and the southeast quarter of section twenty (20), all of section twenty-seven (27), all of section twenty-eight (28), the northeast quarter and the north half of the northwest quarter and the north half of the southeast quarter and the southeast quarter of the south-

east quarter of section thirty (30), all of section thirty-three (33), north of the Calumet river, all of section thirty-four (34) north of the Calumet river, the west fractional half including the fraction south of the river of the southwest quarter of section thirty-five (35), all in township thirty-seven (37) north of range nine (9) west of the second P. M., lots three (3) of section one (1), all of lot one (1) of said section except five and eighty-two one-hundredths (5.82) acres, heretofore conveyed by Caroline M. and Jacob Forsythe to E. A. and C. B. Shedd, and except the strip of land lying between the rights of way of the Pittsburg, Fort Wayne and
272 Chicago railroad and the Lake Shore and Michigan Southern railroad heretofore conveyed by Caroline M. and Jacob Forsythe to John Kreuter, and all of lot two (2) of said section one (1) except the portion of said lot described as follows: Commencing at the northeast corner of said lot two (2), running thence south along the east line of said lot two (2), thirteen and fifty-three one-hundredths (13.53) *cah*ins, thence west parallel with the north line of said lot two (2) to the east bank of the Wolf river, thence northeasterly along said east bank to the north line of said lot two (2), thence east along said north line to place of beginning, containing twenty-two (22) acres of land more or less. Lots one, two, three, and four (1, 2, 3, 4) being the fractional east half *in* section twelve (12), all of fractional section thirteen (13), lots two & three (2 & 3) (being the north half) and the southeast quarter of the southeast quarter and the west half of the north half of the southwest fractional quarter of section twenty-four (24), all in township thirty-seven (37) north of range ten (10) west of the second P. M. excepting however from this conveyance the north one hundred sixty (160) acres of the following-described tract. Commencing at a point on the east line of the Indiana boulevard where the centre line of section twenty (20), in township thirty-seven (37) north range nine (9) west, intersects the same, running thence east along the centre line to the quarter post on the east line of said section twenty (20), thence southeasterly in a straight line to the southeast corner of the north half of the northwest quarter of section twenty-eight (28), in the township and range last aforesaid. Thence west on the south line of said north half of the northwest quarter of section twenty-eight (28) to the east line of said Indiana boulevard, thence northwesterly along the easterly line of said boulevard, to the point or place of beginning. The south line of said one hundred sixty (160) acres hereby excepted to be parallel with the south line of the said last-described tract.

This conveyance is made subject to existing highways and railroad rights of way upon and across various portions of said land.

In witness whereof the parties hereto have hereunto set their hands and seals this ninth day of July, one thousand eight hundred and eighty-seven (1887).

JOSEPH T. TORRENCE. [SEAL.]
LIBBIE N. TORRENCE. [SEAL.]

Signed, sealed and delivered in presence of
GEORGE TOD.

6—47

273 STATE OF NEW YORK, } ss:
City and County of New York, }

I, William E. Trotter, a notary public, in and for said county in the State aforesaid, do hereby certify that Joseph T. Torrence and Libbie N. Torrence, his wife, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed sealed and delivered the said instrument as their free and voluntary act for the uses and purposes therein set forth including the release and waiver of the right of homestead.

Given under my hand and notarial seal this twelfth day of July, 1887.

WM. E. TROTTER,
[SEAL.] *Notary Public, N. Y. Co., N. Y.*

Filed for record, July 27th, 1887, at 3 p. m.
E. P. AMES, *Recorder.*

STATE OF INDIANA, } ss:
Lake County, }

I, John F. Krost, recorder in and for said county and State, do hereby certify that the writing contained in and on the foregoing pages is a full, true and complete copy of the record of a quitclaim deed as recorded in this office on the 27th day of July, 1887 in Deed Record No. 42, page 180 together with the certificate of E. P. Ames then recorder of said county, as to the recording of the same, as now appears of record in this office, and of which record I am now the custodian.

Witness my hand and official seal, this 9th day of August, 1895.
JOHN F. KROST,
[SEAL.] *Recorder of Lake Co.*

42–180.

274 *Offer of Q. C. Deed, Torrence to Cal. Canal & Imp. Co.*

The plaintiff offered and read in evidence a quitclaim deed from Joseph T. Torrence to the Calumet Canal and Improvement Company, dated Aug. 16, 1892, which said deed is as follows, to wit:

Q. C. Deed, Torrence to Cal. Canal & Imp. Co.

Joseph T. Torrence
to
Calumet Canal & Imp. Company. } Q. C. D.

The grantor, Joseph T. Torrence, a widower of the city of Chicago, in the county of Cook, and State of Illinois for and in consideration of one dollar, convey- and quitclaim- to the Calumet Canal and Improvement Company, a corporation duly organized under the laws of the State of Indiana, all interest in the following-described real estate, to wit:

The west one-half of the southwest quarter, of section six (6), the northwest quarter of the northwest quarter and the south half of the northwest quarter and the southwest quarter of the northeast quarter and lots one (1), two (2), three (3) and four (4), being the south half of section seven (7), the west half of the southwest quarter of section eight (8), the northeast fractional quarter, the southeast quarter, the east half of the northwest quarter and the southwest quarter of section sixteen (16), all of fractional section fifteen (15), the north half (except the southeast quarter of the northwest quarter) and the south half (except the northeast quarter of the southwest quarter) of section seventeen (17), lots three (3) and four (4), being the southeast fractional quarter of section eighteen (18), all of fractional section nineteen (19), all of section twenty-one (21), all of fractional section twenty-two (22), the north half and the southeast quarter of section twenty (20), all of section twenty-seven (27), all of section twenty-eight (28), the northeast quarter and the north half of the northwest quarter and the north half of the southeast quarter and the southeast quarter of the southeast quarter of section thirty (30), all of section thirty-three (33) north of the Calumet river, all of section thirty-four (34) north of the Calumet river, the west fractional half, including the fraction south of the river of the southwest quarter of section thirty-five (35), all in township thirty-seven (37) north, range nine (9) west of the second P. M. "Lots" (3) three of section one (1), all of lot one (1) of said section except five and eighty-two one-hundredths (5.82) acres heretofore conveyed by Caroline M. and Jacob
275 Forsythe to E. A. and C. B. Shedd, and except the strip of land lying between the rights of way of the Pittsburg, Fort Wayne and Chicago railroad and the Lake Shore and Michigan Southern railroad, heretofore conveyed by Caroline M. and Jacob Forsythe to John Kreuter and all of lot two (2) of said section one (1) except the portion of said land described as follows: Commencing at the northeast corner of said lot two (2), running thence south along the east line of said lot two (2), thirteen and fifty-three one-hundredths (13.53) chains, thence west parallel with the north line of said lot two (2) to the east bank of the Wolf river, thence northeasterly along said east bank, to the north line of said lot two (2), thence east along said north line to place of beginning, containing twenty-two (22) acres of land more or less. Lots one (1), two (2), three (3) and four (4) being the fractional east half in section twelve (12), all of fractional section thirteen (13), lots two (2) and three (3) being the north half and the southeast quarter, of the southeast quarter, and the west half of the north half of the southwest fractional quarter of section twenty-four (24), all in township thirty-seven (37) north range ten (10) west of the second P. M. excepting however from this conveyance the north one hundred sixty (160) acres of the following-described tract. Commencing at a point on the east line of the Indiana boulevard where the centre line of section twenty (20) in township thirty-seven (37), north range nine (9) west, intersects the same running thence east along the centre line to the quarter post on the east line of said section twenty (20), thence southeasterly in a straight line to the southeast corner of the north half of the northwest quarter of section

twenty-eight (28) in the township and range last aforesaid, th
west on the south line of said north half of the northwest quart
section twenty-eight (28) to the east line of said Indiana boule
thence northwesterly along the easterly line of said boulevard t
point or place of beginning, the south line of said one hundred
(160) acres hereby excepted, to be parallel with the south line of
last-described tract.

This conveyance is made subject to existing highways and rail
rights of way, upon and across various portions of said lands.

In witness whereof, the grantor herein has hereunto set his
and seal this sixteenth day of August, one thousand, eight hun
and ninety-two.

JOSEPH T. TORRENCE. [SEA

276 STATE OF ILLINOIS, } ss :
County of Cook, }

I, Marshall Lapham, a notary public, in and for said count
the State aforesaid, do hereby certify, that Joseph T. Torrence,
sonally known to me to be the same person whose name is
scribed to the foregoing instrument appeared before me this da
person and acknowledged that he signed, sealed and delivered
said instrument as his free and voluntary act, for the uses and
poses therein set forth, including the release and waiver of the
of homestead.

Given under my hand and notarial seal this 16th day of Au
1892.

[SEAL.] MARSHALL LAPHAM,
Notary Publ

Filed August 30th, 1892, at 8 a. m.

ED. P. AMES, *Record*

60–163–65.

STATE OF INDIANA, } ss :
Lake County, }

I, John F. Krost, recorder in and for said county and Stat
hereby certify that the writing contained in and on the foreg
pages is a full, true and complete copy of the record of a quitc
deed, as recorded in this office on the 30th day of August, 1892,
the certificate of Ed. P. Ames, then recorder of said county, as t
recording of the same, as now appears of record in this office, a
which record I am now the custodian.

Witness my hand and official seal, this 9th day of August,

JOHN F. KROST,
Recorder of Lake Cou

277 *Plaintiff Rests.*

And the plaintiff here rests.

FOLD OUT IS TOO LARGE TO BE FILMED

Evidence in Behalf of Def't Kean.

And the defendant Kean in order to sustain the issues on her behalf introduced the following evidence:

Plat and Field-notes. New Survey.

Mr. FENNELL: I offer in evidence a plat and field-notes of what is called the new survey.

The plaintiff objected to the introduction of the plat and field-notes in evidence on the ground that the Government had nothing at the time to plat, nothing to survey and nothing to sell.

The plat and field-notes *was* marked Exhibit A.

The court took the objections to the plat and field-notes under advisement, and after being fully advised the court overruled the objections to which ruling the plaintiff excepted, and thereupon over the objections of plaintiff the said plat and filed-notes were introduced and read in evidence and are as follows:

(Here follow diagrams marked p. 278.)

279 DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C. *September 10th*, 1889.

I, W. M. Stone, acting Commissioner of the General Land Office, do hereby certify that the annexed copy of the field-notes of the survey of the beds of Wolf and George lakes in township 37 north, ranges 9 and 10 west and township 38 north, range 10 west of the 2d principal meridian, Indiana, executed by Alexander Wolcot under instructions from the Commissioner of the General Land Office, dated Oct. 23, 1875 is a true and literal exemplification of said survey on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.] W. M. STONE,
Acting Commissioner of General Land Office.

Field Notes, New Survey.

Survey of the Beds of Wolf and George Lakes, Indiana.

Field-notes

of the survey of fractional sections seven (7) eighteen (18) and nineteen (19) in township thirty-seven (37) north, range nine (9) west of the 2d meridian of Indiana, and fractional sections one (1) twelve (12) thirteen (13) and twenty-four (24) in townships thirty-seven (37) north, range ten (10) west of 2nd meridian in Indiana, and fractional section thirty-six (36) township thirty-eight (38) north, range ten (10) west of 2nd meridian of Indiana, in the county of

Lake and State of Indiana, by Alexander Wolcott, deputy surveyor, under his contract with the Commissioner of General Land Office bearing date Oct. 23rd A. D. 1875.

280 Township 37 N., R. 10 W., 2nd Meridian, Indiana.

Section 24.

North. On east line
24.50 Set meander post
40.00 Set ¼ post in water 1½ ft. deep
77.15 Set corner to sections 13 & 24 in water 2½ ft. deep

Section 13.

North. On east line
35.00 To marsh & rice beds
40.00 Set ¼ post in marsh
50.70 To water and rushes
65.00 To meadow
78.02 Set post in mound over charcoal
for corner of 12 & 13

Section 12.

North. On east line
30.95 To edge of timber set post from which
a lynn 8 in. diam. bears S. 64¾° W. 42 lks. dist.
" elm 8 " " " N. 75° W. 46 " "
32.50 Leave timber & enter prairie
40.00 Set ¼ post from which
a double lynn 9 in. diam. bears N. 79° E. 260 lks. dist.
80.00 Set post corner of sections 1 & 12.

281 Section 1.

North. On east line
40.00 Set ¼ post
76.24 South margin of Lake Michigan
Offset west 10.31 chs. & north 767 lks.
17.67 To the north line of sec. 1
set meander post from which
a poplar 8 in. diam. bears east 150 lks. dist.

Nov. 5th 1875.

ALEX. WOLCOT, *D. S.*

Township 37 N., R. 10 W.

West. Between sections 13 & 24
17.00 To land
18.36 Set meander post in mound from which
a W. ash 8 in. diam. bears S. 14¾° E. 173 lks. dist.
" " 16 in. " " N. 0¾° E. 166 " "
22.30 To water
23.36 Set meander post in water 1 ft. deep

40.00 Set ¼ post in water 1½ ft. deep
68.02 Set post on State line water 3 ft. deep
5543 lks. north of 155th mile post
Water full of rushes bottom
level and sand except 5 chains on west side when
the muck is 1 ft. deep.

282 Township 37 N., R. 10 W.

West. Between sections 12 & 13 T. 37 N., R. 10 W.
18.25 Find old meander corner post & witness
23.76 To water
40.00 Set ¼ post in water 1½ ft. deep.
66.90 Set post on State line in water 3 ft. deep
Level sand bottom water full of rushes &grass.
West. Between sections 1 & 12, T. 37 N., R. 10 W.
20.00 Set meander post in mound over charcoal
21.40 To water
34.00 To meadow.
40.00 Set ¼ post in mound over charcoal
49.00 To water
51.00 Set meander in water 3 ft. deep.
66.58 Set post on State line from which
an elm 7 in. diam. bears N. 36° E. 71 lks. dist.
" " 20 " " " S. 44° E. 104 " "
3270 links south of the 158 mile post.

Nov. 6th 1875.

ALEX. WOLCOT, *D. S.*

283 Township 37 N., R. 10 W.

Sec. 1.

West on north line from meander post
10.99 To meander post from which
a burr oak 6 in. diam. bears west 15 lks. dist.
This meander post is 2130 links west of east line of
section 1.
This line is on a sand ridge about 3 ft. above
water in Lake Michigan.

Township 37 N., range 9 W.

West. Between 18 & 19
22.50 Set meander post in mound from which
a blk. oak 10 in. diam. bears S. 80° E. 119 lks. dist.
" " " 8 " " " S. 55° E. 114 " "
27.00 To water
31.00 To marsh
32.00 To water
35.00 To marsh
37.00 To meadow
40.00 Set ¼ post from which

an elm 16 in. diam. bears N. 52° W. 345 lks. dist.
" " 16 " " " " west 465 " "

43.50 To timber consisting of elm, cherry, lynn, ash, etc.
44.65 Elm 16 in. diam.
47.00 To plowed land
49.00 To timerber ridge 100 lks. wide
50.00 To water
75.52 To range line post in water 2½ ft. deep filled with rushes & other vegetation 490 lks. north of corner of sections 13 & 24, T. 37 N., R. 10 W.

Township 37 N., R. 9 W.

West. Between sections 7 & 18, T. 37 N., R. 9 W.
35.00 Set meander post in mound over charcoal
37.00 To water
40.00 Set ¼ post in water 1½ ft. deep
71.00 To meadow

284

75.39 Set post on range line in mound over charcoal 633 lks. north of corner of sect. 12 & 13 T. 37 N. R. 10 W.

Nov. 10th, 1875.

ALEX. WOLCOT, *D. S.*

General Description.

The timber is mostly elm interspersed with white & black ash, lynn, cherry & oak, the ridges of timber are high and dry and can be cultivated in fact the settlers raised corn, potatoes & other garden vegetables the past summer; the meadow lands are very prolific, turning out 2½ tons of hay pr. acre, the marshes are becoming dryer every year & in a few more years will be entirely reclaimed.

ALEX. WOLCOTT, *D. S.*

Offer of Patent, U. S. to St. Indiana.

Mr. FENNELL: Inasmuch as the abstract is very meager so far as the patent to the State of Indiana is concerned, and inasmuch as we have stipulated that the entries in that abstract may go in, I desire to offer in evidence a certified copy of a patent to show that the conveyance was according to the original patent to the State of Indiana.

The patent was marked Exhibit B and was read in evidence and is as follows:

285 *Patent, U. S. to Indiana.*

(Certified copy of patent, Lake county, Indiana.)

No. 4.

The United States of America to all to whom these presents shall come, Greeting:

Whereas, by the act of Congress approved September 28, 1850, entitled "An act to enable the State of Arkansas and other States to reclaim the 'swamp lands' within their limits," it is provided that all the "swamp and overflowed lands," made unfit thereby for cultivation, within the State of Indiana which remained unsold at the passage of said act, shall be granted to said State:

And whereas, in pursuance of instructions from the General Land Office of the United States, the several tracts or parcels of land hereinafter described have been selected as "swamp and overflowed lands," inuring to the said State under the act aforesaid, being situated in the district of lands subject to sale at Winamac, Indiana, to wit: (37 N. R. 10 W.)

Also, the whole of fractional sections one, twelve, thirteen and twenty-four, the north half of the southeast quarter, the southeast quarter of the southeast quarter and the northwest quarter of section twenty-five and the whole of fractional section thirty-six, all in township thirty-seven, north of range ten west, containing in all one thousand seven hundred and ninety-one acres and sixty-hundredths of an acre. * * *

According to the official plats of survey of the said lands returned to the General Land Office by the surveyor general. And for which the governor of the said State of Indiana, did on the eighteenth day of December, one thousand, eight hundred and fifty-two, request a patent to be issued to the said State, as required in the aforesaid act.

Now therefore, know ye, that the United States of America in consideration of the premises and in conformity with the act of Congress aforesaid, have given and granted, and by these presents do give and grant unto the said State of Indiana, in fee-simple, subject to the disposal of the legislature thereof, the tracts of land above described. To have and to hold the same, together with all the rights, privileges immunities and appurtenances thereto belonging unto the said State of Indiana, in fee-simple and to its assigns forever.

In testimony whereof, I Franklin Pierce, President of the United States of America have caused these letters to be made patent
286 and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington, the twenty-fourth day of March, in the year of our Lord, one thousand eight

hundred and fifty-three and of the Independence of the United States the seventy-seventh.

By the President:

FRANKLIN PIERCE,

[SEAL.] By SIDNEY WEBSTER, *Secretary.*

E. S. TERRY,

Recorder of the General Land Office.

Recorded vol. 1, page 79 to 90 inclusive.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *Dec.* 6, 1889.

I, Lewis A. Groff, Commissioner of the General Land Office, do hereby certify that the annexed paper, being a copy of so much of the record of swamp land, patent No. 4 Winamac district, Indiana, as far as the same relates to land in township 37, north of range 10 west, is a true and literal exemplification of the same as it appears on the record of this office.

In testimony, whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

LEWIS A. GROFF,

[SEAL.] *Commissioner of the General Land Office.*

287 *Offer of Abstract by Defendant Kean.*

Mr. FENNELL: I offer this abstract in evidence.

Mr. JOHNSTON: The plaintiff objects on the ground that none of them are competent evidence; that the Government had nothing to sell or plat and so hence the parties acquired nothing.

The abstract was marked Exhibit B 11, 5, '95, and the court took the evidence under advisement as to the competency of it.

And the court after being sufficiently advised overruled the plaintiff's objections to which ruling the plaintiff excepted, and thereupon the said abstract was over the plaintiff's objections read in evidence and is as follows:

288–390 *Abstract of Title*

To

Lots five (5), six (6), seven (7), eight (8), nine (9) and ten (10), and the southwest quarter of section twelve (12). Lots three (3), four (4), five (5), six (6), seven (7), and eight (8), and the fractional north half and the fractional southwest quarter of section thirteen (13). Lots four (4), five (5), six (6) and seven (7), in section twenty-four (24). All in township thirty-seven (37) north of range ten (10) west of the second principal meridian.

Also lots five (5), six (6), seven (7), eight (8), nine (9), ten (10), eleven (11) and twelve (12), and the east half of the west half, of section eighteen (18). Lots five (5), six (6), seven (7), eight (8), nine (9),

ten (10) and eleven (11), in section nineteen (19). All in township thirty-seven (37) north of range nine (9) west of the second principal meridian.

All in Lake county in the State of Indiana.

* * * * * * *

391 *Receipt to Kean for Taxes.*

No. 202. Treasurer's office. $389.78.

CROWN POINT, LAKE COUNTY, IND., *Feb. 11th*, 1888.

Received of Annie R. Kean, three hundred eighty-nine and $\frac{78}{100}$ dollars, in full for April and November installments for State, county, township, school, sinking fund, special school, endowment fund, road tax, for the years 1886 and 1887, on property; also on the following-described real estate:

Description of land.	Sec.	Town.	Range.	Acres.	Am't of tax.
Lots 5 to 8.....	12	37	10	162.13	$211.99
Lots 9, 10 & S. W...	12	37	10	192.14	177.79
					389.78

C. C. SMITH,
Treasurer of Lake County.

The following appears on the back of above tax receipt:

FEB. 11, 1888.

I pay this for Annie R. Kean under protest to avoid sale and cloud on her title.

JOHN CULVER.

In presence of
C. C. SMITH, *Treasurer.*
A. A. SAUERMAN.
H. MARBLE, *Auditor.*

392–415 And the defendant Mason to sustain the issues on his behalf introduced the following evidence:

Evidence in Behalf Defendant Mason.

Mr. MCMAHAN: I first introduce in evidence tax deeds from the auditor of Lake county to Thomas J. Wood, dated May 30, 1887, purports to convey lots 5, 6, 7 and 8 and the undivided one-half of lots 3 and 4, all in section 13, township 37 range 10, for the sum of $426.29. Certificate issued for sale, March 6, 1882. Part are for the land within the bed of the lake and part for land without the lake bed.

The COURT to Mr. McMahan: Why not introduce all your tax deeds at one time and shorten the matter.

Mr. MCMAHAN: I will now introduce these nine tax deeds in evidence.

The said nine tax deeds were read in evidence, and are as follows:

416 *Testimony of S. A. Kean.*

SAMUEL A. KEAN one of the defendants, being duly sworn, testified as follows:

Examined by Mr. FENNELL:

Q. Tell briefly what you know about the building of this house down there and who, if anybody, was in possession?

Mr. JOHNSON: We object to the latter part of the question.
COURT: The possession is to some extent a conclusion.

Q. State in regard to the building of this house, what was done?
A. Well, Mr. H. O. McDaid was attorney for all parties concerned.
Q. How long has Anna R. Kean upon the whole claimed to be the owner of this land in litigation?

Objected to by counsel for the plaintiff.

Ans. I think the abstract shows; from the first she has been.

Objected to.

Q. Do you know whether or not Mr. Forsyth had personal and actual knowledge of Mrs. Kean's claim to this land?

Objected to by plaintiff.

Q. What did she do as to asserting title to that land against Mr. Forsyth?
A. She received deeds.
Q. Did she give Mr. Forsyth any notice?
A. Yes; in various ways.

Objected to.

Q. Did you ever give him notice in writing?
A. McDaid did as our attorney.

Objected to.

Q. State what was said with reference to Mr. Forsyth as to any act done by your wife or by any one that had authority to represent her with reference to communicating her claim of title to Mr. Forsyth? Look at the paper now shown you and tell me what it is.
A. It is a notice to Mr. Forsyth from Anna R. Kean, dated February 9, 1888.
Q. What was done with the notice?
A. It was sent to him.
Q. How?
A. I think it was delivered by the proper officer.

Mr. FENNELL: I now offer the paper in evidence. It shows that it was read by the proper officer—somebody who was sworn.

417 Mr. JOHNSTON: There is no proof that it has been served on Mr. Forsyth.

COURT: Who signed that?

A. Mr. Long as her attorney at that time.

COURT: Do you know whether she was cognizant of that paprr that was signed?

A. Yes; she knew about it.

COURT: What did she say about it?

A. I don't remember what she said.

COURT: Who was signed for?

A. Mrs. Kean.

Mr. FENNELL: I ask you to look at the handwriting and tell me whose writing that is.

A. John T. Long's.

Q. Take the body of it.

A. John Culver's handwriting.

Q. What relation had John Culver in regard to this land?

A. He had charge of the detail part of it.

Mr. JOHNSTON: That purports to be served on Forsyth seven years after he parted with the title.

COURT: I will let in that portion of the evidence which shows that it was placed in the hands of a certain person to be served. I exclude that portion of Mr. Forsyth being served.

Q. I will ask you to state if at any time prior to that and if so when? Mrs. Kean or any one for her, within your knowledge, asserted title to this land.

Objected to by plaintiff.

Q. State what she done, if she done anything in asserting title?

Objected to by plaintiff and the court overruled the objection.

Ans. From time to time I advanced money for fences.

COURT: What did she do about stating to any one that she owned it or anything of the kind?

A. She gave Mr. Kreuter a lease for the property. Mr. Kreuter has many times every year asserted her title.

418 Q. To your knowledge directly?

A. Yes, sir; to my knowledge from him to me directly—from him to me.

Objected to by plaintiff.

Q. I will ask you to state if you were general agent of Anna R. Kean?

A. Yes, sir.

Q. Did you have full power to represent her in connection with that land?

A. I did.

Q. State what you did as her agent?

Objected to by plaintiff.

Assertion of Title by Kean Admitted.

Mr. FENNELL: Is there any question about their during all those years having asserted title to this land?

Mr. JOHNSTON: I don't know that there is not.

COURT: Let us assume it then.

Cross-examination of Kean.

Cross-examined by Mr. JOHNSTON:

Q. You are an ex-banker now of Chicago?
A. Yes.
Q. What is your business?
A. I am dealing in municipal bonds.
Q. Where is your office?
A. United States Express building.
Q. You say she knew of that notice?
A. She knew of it as she knew of all matters. She knew Mr. Long——
Q. You think that is the way she knew it?
A. That is the way she knows matters in general.

Mr. FENNELL: We now offer this notice in evidence.

And thereupon the notice to Mr. Forsyth was read in evidence, and the same is as follows:

419 *Notice to Forsyth.*

STATE OF INDIANA, } ss:
Cook County, }

To Caroline M. Forsythe and Jacob Forsythe, 1915 Michigan avenue, Chicago:

Take notice that you are trespassing upon my lands by building or causing to be built a certain fence on or near the line of section seven (7) and section eighteen (18) in township thirty-seven (37) range nine (9) in the new survey in Lake county, State of Indiana and you will therefore desist from building the same and remove said fence as I have the legal and equitable title to said real estate and the lawful possession of the same in said section.

ANNA R. KEAN,
By LONG & HUTCHINSON,
Her Attorneys.

Chicago, Feb. 9th, 1888.

STATE OF INDIANA, } ss:
Cook County, }

O. B. Knight, being duly sworn, deposes and says that he is of the age of twenty-one years and upward and a resident of said county and State and that he served the within notice on the within-

named Jacob Forsythe by delivering to and leaving with him a true copy thereof, the 9th day of February, 1888.

Also upon Caroline M. Forsythe by leaving a true copy thereof for her at her usual place of abode with Jacob Forsythe, a member of her family, a person of the age of ten years and upwards at the same time informing her of the contents thereof this 9th day of February, 1888.

O. B. KNIGHT.

Subscribed and sworn to before me this 19th day of February, 1888.

[SEAL.] JOHN M. HUBBARD,
Notary Public.

(Notice of trespassing. Anna R. Kean *vs.* Caroline M. Forsythe and Jacob Forsythe. Long & Hutchinson, her att'ys.)

420 *Testimony of Wm. Krimbill.*

WILLIAM KRIMBILL, a witness for plaintiff, being duly sworn, testified as follows:

Examined by Mr. JOHNSTON:

Q. You may state if you were at one time treasurer of Lake county?

A. I was.

Q. For what years?

A. I took the office in 1879 and left it in August, 1883.

Q. Are you acquainted with lots 3 and 4 in section 18 township 37 range 9?

A. Only as they appear on the tax duplicate.

Q. As they appear on the tax duplicate?

A. Yes.

Q. You went in the office in August, 1879?

A. Yes.

Q. During the time you were in the office who paid the taxes on those lots?

A. I think for two or three years a man by the name of Peterson paid them.

Q. Do you know who he paid for?

A. He paid for the insurance company—the Northwestern of Milwaukee, who held a mortgage. He acted for that company and he paid the taxes on them.

Q. Who paid for 1880 and 1881?

A. I could not say as to that yet I think Peterson did.

Q. You may state if they were sold for taxes during any of the time while you were treasurer.

A. No; they were not sold.

Q. Take lots 1, 2, 3 and 4 and the southeast quarter of the northeast quarter and the southeast quarter of section 19, who paid the taxes?

A. Mr. Peterson paid on all those lands.
Q. Just the same as the others?
A. Yes.
Q. Well, we will go to lots 3 and 4 and lots 1 and 2 in sections 12 and 13; lots 2 and 3 of the northwest quarter of the southwest quarter and the southeast quarter of the southeast quarter, who paid those during that time?
A. They were paid during the same time the same as the others.
Q. Were any of those ever sold for taxes?
A. Not while I was treasurer.

Cross-examined by Mr. FENNELL:

Q. Who paid the taxes on lots 7 and 8 in section 18?

Mr. JOHNSTON: We object. They are going now into the lake. We claim that is not cross-examination in the first place; and in the second place when we paid on the lots according to the
421 Government survey we have paid all there is to pay on that part.

Q. I will get at it in another way. Where are lots 3 and 4? In what section?
A. I could not say. All I know about it is by the section. They paid on sections.
Q. According to your tax duplicate were there any other lots in the southeast quarter of section 18, other than lots 3 and 4?
A. I could not answer.
Q. But you remember particularly about 3 and 4?
A. They were in that section.
Q. Don't you know that lots 7 and 8 of that same quarter are on the same books from which you testify?
A. No.
Q. You haven't refreshed your memory by that?
A. No; only sections.
Q. Except lots 1, 2, 3 and 4 in sections 19, what other lots were on your tax duplicate in that section?
A. That I could not say. I know by sections.
Q. I am asking you by sections. What other lots on your tax duplicate by sections?
A. I don't know; I could not testify to that.
Q. State whether or not you know there were other lots in those sections?
A. I don't know.
Q. I will ask you by virtue of your oath if any of the bed of those lakes were on your tax duplicate.

Objected to by plaintiff.

COURT: I can only conceive that this is properly for no other purpose than merely to test the recollection of the witness.

Mr. FENNELL: If that same book from which he testifies shows that a portion of the land in controversy was assessed in another description and that other parties paid taxes on it——

COURT: You are not entitled to the contents of the record.

Q. I ask you if any other portion, according to your recollection,—as to whether you remember that any other portion of those sections were on your tax duplicate in any other description?

A. I could not state as to that.

422 Q. I will ask you to look at your map and tell me from your recollection if Peterson ever paid any taxes on the bed of either of those lakes?

Objected to by counsel for plaintiff on the ground that it is not cross-examination. That would be a conclusion of the witness anyway as to where the lots run to.

COURT: I will permit him to ask as to whether he paid specifically upon the bed of the lake.

Q. You may answer.

A. That I could not state. I don't know whether he did or not.

Q. What did you say your official position was?

A. I was county treasurer.

Q. You had charge of the tax duplicates of your county?

A. Yes, sir.

Q. Do you know whether the bed of Wolf lake was surveyed and assessed for taxes and extended on your tax duplicate at any time?

Objected to by counsel for plaintiff and the court sustained the objection on the ground that it is calling for the contents of a tax duplicate.

Q. Did your tax duplicate show any other land assessed in this section?

Objected to by counsel for plaintiff and the court sustained the objection.

Q. Do you remember of any other person paying taxes on any portion of this section?

A. I do not.

423 *Testimony — J. P. Merrill.*

JOHN P. MERRILL was the next witness in behalf of the plaintiff, and being duly sworn, testified as follows:

Examined by Mr. JOHNSTON:

Q. What was your official position in Lake county, if any, from August 1883 to 1887?

A. County treasurer of Lake county.

Q. You are acquainted with Mr. Jacob Forsyth?

A. I am.

Q. Can you tell me who paid the taxes on——

COURT: Could you describe them simply as lots which are numbered and rim lots about the rim of those two lakes?

Mr. JOHNSTON: The trouble is much of it did not belong to Forsyth.

Q. Do you recollect who paid the taxes on lots 3 and 4 of section 18 township 37 range 9 during those years?

A. I could not tell who paid them—the parties; they were paid in the name of the East Chicago Improvement Company.

Q. Who paid them on lots 2, 3 and 4 and the southeast quarter of the northeast quarter and the southeast quarter of section 19 in township 37 range 9?

A. The same party.

Q. Lots 3 and 4 of section 12 and lots 1 and 2 of section 13 in township 37 range 9, and the northwest quarter of the southwest quarter and the southeast quarter of section 24 township 37 range 10?

A. They were paid by the same party at the same time.

Q. Were any of them ever sold for taxes?

A. Not during my term of office.

Cross-examined by Mr. WOOD:

Q. You are speaking about the lands around the rim of those two lakes. You recognize the lakes marked on this map don't you?

A. Yes.

Q. Can you see the lots that those taxes were paid on?

COURT: I suppose the only question is whether they paid specifically on the lake bed.

A. Not as I know of,—only described in those lots I testified to.

424 Q. Well those lots that they paid taxes on bordered on the lake.

A. I could not say.

Q. You are confident that they did not pay taxes on the bed of the lake?

The COURT: He has already stated they did not pay specifically on the bed of the lake.

Q. Were you at that time familiar with that country?

A. No; I was not.

Q. You could not tell—draw a line between the water's edge and the meander line?

A. No.

Q. You don't know anything about that?

A. No.

Testimony — W. L. Allman.

WALTER ALLMAN, the next witness for the plaintiff, being sworn, testified as follows:

Examined by Mr. JOHNSTON:

Q. You are an abstracter at Crown Point?
A. Yes.
Q. I believe you are a banker, too?
A. Not yet.
Q. Did you ever pay taxes for Mrs. Forsyth?
A. Yes; several times.
Q. Do you recollect when?
A. No; I could not say positively what years I paid for. I refreshed my recollection by referring to the books.
Q. That was prior to 1881?
A. No, I think I never paid prior to that time.
Q. Did you pay after that?
A. It might have been before. I could not say positively whether we paid before 1881 or not.
Q. When did you pay—you may state whether or not you paid on those lots in sections 18 and 19?

COURT: Is there any controversy but what the plaintiff and his grantors paid the taxes which were assessed against these lots which are numbered about the rim? And on the other hand I suppose your people, some of them, paid taxes on the lake bed under this new survey.

425 Mr. JOHNSTON: That is the fact about it.

Mr. WOOD: I don't think there is any controversy about that.

Mr. JOHNSTON: Then it is admitted that the plaintiff and its grantors under whom it claim- title to those lots paid the taxes from 1870 up to 1891 on all the lots which are numbered around the rim of the lakes, according to the descriptions that have been given.

Mr. FENNELL: That will be admitted—to the rim of the lake.

COURT: They paid on the lots numbered about the rim of the lake.

Mr. FENNELL: And the defendant paid the taxes on the lots numbered in the bed of the lake.

COURT: Yes, claiming under the new survey, it being in reality a question as to the validity of the title to the property.

Mr. JOHNSTON: Yes; that is right.

The plaintiff next read in evidence the depositions of Frederick C. Rossiter, Jacob Forsyth and Oliver Forsyth, which are respectively in the words and figures following:

426 *Deposition of F. C. Rossiter.*

STATE OF INDIANA, } ss:
Porter County, }

In the Porter Circuit Court, October Term, 1895.

CALUMET CANAL & IMPROVEMENT COMPANY
vs.
CHARLES B. ALEXANDER, HENRY B. MASON, ANNA R. KEAN, Samuel A. Kean, *et al.*

The defendants in the above-entitled cause are hereby notified that on the 26th day of September, 1895, at the office of W. O. Johnson, 803 The Rookery, La Salle street, city of Chicago in the county of Cook and State of Illinois, between the hours of 8 o'clock a. m. and 6 o'clock p. m., of said day, before some officer authorized to take depositions, the plaintiff will proceed to take the depositions of Frank E. Rossiter, Edward Roby, witnesses to be used in evidence on the trial of said cause, and will, if necessary continue said taking from day to day until said depositions are completed.

Dated this 17th day of September, 1895.

W. O. JOHNSON &
WILLIAM JOHNSON,
Att'ys for Plaintiff.

We acknowledge service of the above notice, and waive dedimus and certificate of official character of officer before whom said depositions are taken, this 17th day of September, 1895.

W. C. McMAHAN,
THOS. J. WOOD,
Att'ys for Defendant Mason.

____ ____,
Att'y for Annie R. Kean et al.

427 The deposition of Fred C. Rossiter, witness, produced and sworn to before me, a notary public, at Chicago, in Cook county, State of Illinois, on the twenty-sixth day of September, 1895, pursuant to the enclosed notice.

This deposition was taken on the part of the plaintiffs in a certain action now pending in the circuit court of Porter county, in the State of Indiana, wherein Calumet Canal and Improvement Company — plaintiffs, and Charles B. Alexander, Henry B. Mason, Annie R. Kean, Samuel A. Kean *et al.* defendants.

The said FRED C. ROSSITER being duly sworn to testify the truth, the whole truth and nothing but the truth relating to said cause, deposes as follows:

Q. State your name, age, residence and occupation?

A. Age 51, residence Chicago, occupation is surveyor and civil engineer.

Q. How long have you been a surveyor and civil engineer?
A. Twenty-eight years.
Q. How long have you lived in Chicago?
A. Twenty-eight years.
Q. Are you acquainted with sections 18 and 19 in township 37, north range 9, and the south half of sections 12, section 13, and section 24, in township 37 north of range 10, west of Lake county, Indiana?
A. Yes sir.
Q. You may state whether or not you are acquainted with that country generally?
A. Yes sir.
Q. How long have you been acquainted with it?
A. Since 1876.
Q. State whether you are acquainted with Wolf lake and Lake George?
A. Yes sir.
Q. You may state whether or not you have ever done any of these lakes?
A. Yes sir; probably from fifty to sixty days on the lakes.
Q. When was that?
A. Since 1874.
Q. What time did you commence in 1874?
A. It was late in the fall or winter.
Q. Describe the character of these lakes?
A. They are low partly grown over with grass, wild rice and the banks on the land adjoining are low flat lands.
Q. How large are the lakes?
428 A. Well, Lake George, I should say was a little over half a mile wide by nearly two miles long, perhaps a little more, and Wolf lake in Indiana, is nearly a mile wide in one place. I think it would average about three-quarters of a mile in width and including the northern neck, sometimes called Wolf river, it would be nearly four miles long or three and one-half.
Q. Do you know when the last land around the lakes was first surveyed?
A. I can give you the date by my field-notes here.
Q. Well, if you can tell when by memory?
A. About 1834 or '35.
Q. Which lake lies to the east?
A. Lake George.
Q. What portion, if any, of the south half of section 18 and 19, township 37, range 9 are in the lake?
A. Without referring to any map, I should say about half of section 18; of section 19, same township, the north half would be of the section 19, a little over half in the lake, of the south half—perhaps a quarter or one-third.
Q. Now take section 12, township 37 north of range 10 west the south half of that, what portion is in the lake?
A. I should think three-fourths of it.
Q. Section 13?

A. More than three-fourths.

Q. Section 24?

A. Well, I should think the north half might be the half in the lake. All of these answers are given from memory, without referring to any map.

Q. Now, state again what is the character of the lake, its bed, etc.

A. The soil under the bed, or under the lake is sand in most places. I think it was originally entirely sand—some decayed vegetation. There are portions of it now that are covered with soil, perhaps one-third, or less than one-third of the lake—maybe not over one-eight is grown up with weeds and coarse grass, wild rice and it is naturally flat, that is, it is not very deep.

Q. How about the shores?

A. The margin of the lake, the land is very flat, but little banks.

Q. What is the depth of these lakes?

A. The average depth is about 3 or 3½ feet.

Q. Can you tell what the depth of the lake is at the deepest part?

A. There is a place in the northern end of Wolf lake that is 17 feet deep.

429 Q. Where is that point, where it is so deep?

A. Near the northern end of the lake, which is sometimes termed Wolf river. The northern three-quarters of the lake in the channel will average about nine feet in depth; in the body of the lake proper that portion that is never called river, I think the deepest place is 6½ feet in the average water.

Q. When did you see the lake first?

A. I cannot tell when it was exactly, but before the fire 1871.

Q. When did you last see it?

A. About two months ago.

Q. What are its surroundings—what kind of land is around it?

A. It is a sandy-covered land with a thin coating of soil, in places covered with timber, ridges and sloughs; the ridges are not very high; the general lay of the land adjoining the lake is flat and low.

Q. What kind of vegetation as to weeds and grass?

A. Wire grass and a few weeds.

Q. What kind of timber was this around it?

A. Well, it would be poor timber—short.

Q. I mean as to oak, hickory, etc.?

A. It is mostly what they call scrub oak, poplar, birch, some hickory and maple.

Q. What about the shore lines, state whether they are reasonably well defined or not?

A. They are not except in a few places.

Q. How is it around the south half of section 18?

A. It is not well defined there.

Q. Section 19?

A. A portion of it is a little better defined on 19 than the general

lay of the land. There is a few hundred feet east of the lake proper, quite a strong, high ridge.

Q. How is the shore of the lake as to being sandy or otherwise?

A. General sandy.

Q. Now, state whether or not at high-water mark there is on the east side of Lake George a ridge?

A. Yes sir.

Q. What about the permanence of the lakes?

A. They are permanent lakes and can never be dried except by artificial means.

Q. State whether it has been about the same since you have
430 known those two lakes.

A. Yes sir; take it year after year, the average has been about the same except for the last two or three years, a little drier perhaps on account of a permanent opening being made into Lake Michigan, but it is an indirect opening If it was a direct opening, it would leave the lakes in a permanent condition.

Q. Where is the opening?

A. It is into the Calumet river in the western portion of Wolf lake in Illinois, some three, four or five miles away from Lake Michigan.

Q. State whether or not the last three seasons have been unusually dry?

A. Yes sir.

Q. Can you tell what the difference is between the ordinary year and low-water mark of these lakes?

A. About two feet.

Q. What, if anything, do you know about a deep place about opposite the center of section 18?

A. Well, I think there is a very deep place but it is partly filled with soft mud; it is in the western portion of the lake, I think about seven or eight feet deep; it is what we might call soft bog.

Q. I understand from you that you have made surveys there?

A. Yes sir.

Q. And know these things of your own personal knowledge?

A. Yes sir.

Q. You may describe Wolf river?

A. The Wolf river connects with Wolf lake about the northern line of section 12 and runs nearly straight north to the northern line of section 1 and to within five or six hundred feet of Lake Michigan. At times this connection is open with Lake Michigan and other times it is closed up by the sea on the lake.

Q. Have you seen this place, where Mrs. Kean had her shanty, where is it?

A. My recollection is that it is about from 100 to 250 feet north of the northern line of the south half of section 18; township 37, range 9 on the east shore of Lake George.

Q. How far from the water?

A. Many times the water surrounds the house and is under the house and runs, two, three or four hundred feet east of the house. It is about 20, 30 or 40 feet from the water in its ordinary state.

Q. Where is it with reference to the meander line of the Government survey of 1834 or '5?

A. I think it is about 30 or 40 feet west.

431 Q. What connection does Lake George have with the other lake?

A. It has an artificial connection with Wolf lake on the western side and when the water is high in both lakes, it has a natural connection.

Q. With what?

A. With Wolf lake.

Q. And where, if at all, do these lakes empty their surplus water?

A. In Lake Michigan.

Q. Through what channel?

A. In early years, up to 3, 4 or 5 years ago, through Wolf river directly into Lake Michigan; since that time they empty into the Calumet river from the western portion of Wolf lake in the State of Illinois.

Q. Can you tell about what this lake was in 1834 and '5 during the Government survey, from observation and from your knowledge of them?

A. I think that the water at that time from all that I can judge by the surroundings was above the average stage of water since I have known them.

Q. How much would you say?

A. Six inches to a foot, I should say.

Q. What effect, if any, does the height of water in Lake Michigan have upon these lakes?

A. I should say that the water in Lake Michigan has no effect on the water in these lakes; if the mouth of Wolf river is open, it would then affect the water as long as it remained open; but the first high sea on the lake closes its mouth and then it has no effect again until it is opened.

Q. State whether you have had experiences in other bodies of water like these?

A. To some extent, although more on these two lakes than any other.

Q. Now, take it from your experience, you may state what is the fact, whether or not Lakes George and Wolf are permanent lakes?

A. I have taken soundings in both of these lakes and in Wolf lake in Illinois as well, and connected them with Lake Michigan and know the rise and fall of Lake Michigan and know that the bed of both of these lakes is lower than the lowest stages of Lake Michigan.

Q. What kind of a house is this Kean house?

A. It is a one-story, a little longer than it is wide, I should say, 14 wide by 20 feet long and built of boards set up and down with batons over the cracks.

432 Q. Now, can you tell us where this house or shanty is with reference to the center line of the section running north and south?

A. It is east of the north and south section line.

Q. You say it is east of it.
A. Yes, sir.

Cross-examination of F. C. Rossiter.

Cross-examination by Mr. WILLIAM P. FENNELL:

Q. Were Wolf lake and Lake George ever one lake?
A. I think not.
Q. Are you the same F. C. Rossiter who testified at Crown Point, Ind., in a case of Roby *vs.* Kean?
A. Yes sir.
Q. Do you remember hearing Edward Roby swear that that strip of land dividing Wolf lake from Lake George was originally a beaver dam?
A. I cannot say positively, although I have heard it, and maybe through his testimony; I would not say positively.
Q. You have heard, however, that statement?
A. Yes sir.
Q. Do you believe it?
A. That would be a little question, because I am not sure what is meant by a beaver dam. If that should be taken literally I should say no, but there is a ridge running between the two lakes often called Beaver dam, the ridge must be two miles long and I think would average about 12 feet in width; maybe three feet high, in places, it is a great deal higher than that and some places not so high; in one place in section 24 there is no ridge or dam at all.
Q. Well, if this ridge was originally a beaver dam, then before this dam was made, it must have been all one body of water?
A. In high water it would be all one body of water; in low water, it never has been one body of water; in average stage of water, I hardly think it would be one body, but I would not say positively.
Q. Then assuming that any time of year it was one body of water, then lot 1 and 2 of section 13 must have been originally made by beavers?
A. No sir, I think not. In the first place my explanation of the word beaver dam there was intended to convey the idea that I do not believe that beavers were ever there to make the dam. I do not think it is the kind of dam that the beavers would make and that the dam opposite to section 13, the north half of section
433 13 would not touch section 13; it would have crossed the south half of section 13. I do not know sure without looking at a plat, whether it would touch the south half of section 13 or not. After looking at the map I see that my mind was upon section 12 (the east line instead of section 13), that the beaver dam would be along the eastern edge of section 13. The whole line, that is the beaver dam, would run from the north line to the south line of section 13.
Q. And you think in time of high water that the dam was covered?
A. I hardly think that the dam itself was ever covered with water (as it stands there today) by high water. There is a portion through

the central part of the north half of section 24, where there is no beaver dam, that in high water would be entirely covered. The strip of land between the lakes would be almost entirely covered except that beaver dam.

(Signed) F. C. ROSSITER.

434 STATE OF ILLINOIS, } ss:
Cook County, }

I, R. E. Gross, a notary public within and for said county, hereby certify that the above Fred C. Rossiter was by me first duly sworn according to law, to testify the truth, the whole truth, and nothing but the truth, relating to said cause; that his *deponent* — reduced *to* me *by* writing, that the said Charles B. Alexander, Henry B. Mason, Annie R. Kean, Samuel A. Kean *et al.* attended by William P. Fennell, their attorney, and said deposition was taken in room 801, the Rookery in Chicago, county of Cook, State of Illinois on the 26th day of September, 1895, between the hours of 8 a. m. and 6 p. m. of said day.

In testimony whereof, I have hereunto set my hand and notarial seal, this first day of October, 1895.

[SEAL.] R. E. GROSS,
Notary Public.

435 The depositions of Jacob Forsyth and Oliver O. Forsyth, witnesses produced and sworn *to* before me, Harry F. Lee, a notary public in and for the county of Cook, State of Illinois, on the tenth day of September, 1895, pursuant to the enclosed notice.

These depositions are taken on the part of the plaintiff in a certain action now pending in the Porter circuit court, of Porter county, in the State of Indiana, wherein Calumet Canal & Improvement Company is plaintiff and Charles B. Alexander, Annie R. Kean, Samuel A. Kean and *George* B. Mason, *et al.* are defendants.

The said JACOB FORSYTH, being duly sworn to testify the truth, the whole truth and nothing but the truth relating to said cause, deposes as follows:

Deposition of Jacob Forsyth.

Direct examination by Mr. JOHNSON:

—. State your name, age, residence, and occupation.

A. Jacob Forsyth, 74 years of age; 1915 Michigan Ave., Chicago, Illinois; managing land in Indiana.

Q. Are you the husband of Caroline M. Forsyth?

A. Yes, I am.

Q. Are you acquainted with Annie R. Kean, the wife of Samuel A. Kean?

A. I do not know her.

Q. State if your wife formerly owned sections 18 and 19 in town-

ship 37, north, range 9 west, in Lake county, and sections 12, 13 and 24 in township 37 north, range 10, west, in Lake county.

Objected to by Mr. Fennell as not being the best evidence.

A. Not all of 18; only part of it.
Q. What part?
A. The south half.
Q. How was it as to the other sections?

Same objection by Mr. Fennell.

A. 19 she owned; also 13 and a part of 24.
Q. State whether or not she owned section 12.

Same objection by Mr. Fennell.

A. Yes.
Q. This is the land she conveyed to William W. Green on November 10, 1881?

Same objection by Mr. Fennell.

436 A. Yes.

Adjourned until September 11, 1895, at ten-thirty o'clock a. m.

SEPTEMBER 11, 1895—10.30 o'clock a. m.

Parties met pursuant to adjournment.

JACOB FORSYTH—Examination resumed by Mr. JOHNSON:

Q. Who paid the taxes on this land prior to the conveyance to William W. Green on November 10, 1881?

Objected to by Mr. Fennell as not being the best evidence.

A. Mrs. Forsyth.
Q. Who, if any one, acted as her agent in making these payments?
A. I did.
Q. Who paid them for the years 1880 and 1881?
A. I couldn't tell you; it might have been Green for 1881.
Q. Who paid them for 1880?
A. I believe I did.
Q. And for the prior years?
A. I did.
Q. For whom?
A. For Mrs. Forsyth.
Q. You are acquainted with lots 3 and 4 of the survey of 1835, section 18, town 37, range 9, Lake county, Indiana, are you not?
A. Yes, sir.
Q. Who paid the taxes for those lots for the year 1880 and prior years?
A. Mrs. Forsyth.
Q. Are you acquainted with lots 2, 3 and 4 survey of 1835, section 19, township 37, range 9?
A. Yes, sir.

Q. Who paid the taxes on those lots for the year 1880 and prior years?

A. Mrs. Forsyth.

Q. Are you acquainted with lots 3 and 4, survey of 1834, section 12, township 37, range 10?

A. Yes.

Q. Who paid the taxes on these lots for the year 1880 and prior thereto?

A. Mrs. Forsyth.

Q. Are you acquainted with 1 and 2, survey of 1834, section 13, township 37, range 10, in Lake county, Indiana?

A. Yes, sir.

Q. Who paid the taxes on those lots for the year 1880 and prior years?

A. Mrs. Forsyth.

437 Q. Are you acquainted with lots 2 and 3 in section 24, township 37, range 10, Lake county, Indiana?

A. Yes, sir.

Q. Who paid the taxes on these lots for the year 1880 and prior thereto?

A. Mrs. Forsyth.

Q. State whether or not you were her agent during all those years?

A. Yes.

Q. State as a matter of fact who actually made the payments?

A. Well, it all went through my hands.

Q. You saw the payment of them?

A. I saw to the payment of them.

Q. You may state whether or not you know of your knowledge that the taxes were actually paid on this property for the years 1880 and prior years?

A. Yes I know it.

Q. Can you state whether you or Mrs. Forsyth paid the taxes for 1881 on this property?

A. I said that it might have been Mr. Green.

Q. How long have you known this land?

A. Since 1860.

Q. At the time of the conveyance by yourself and Caroline M. Forsyth, your wife on November 10, 1881, to William W. Green, who, if any one, was living upon or in possession of this land?

A. Nobody was living on it.

Q. State whether or not there were any fences on these lands at that time, in these sections that I have named?

A. No.

Q. State whether or not there were any houses or buildings upon these sections I have named, at the time of the conveyance to William W. Green?

A. No.

Q. You are not acquainted with Annie R. Kean?

A. No.

Q. Are you acquainted with her husband, Samuel A. Kean?

A. No, I could not say that I was; I have seen him, I believe, but I don't know whether I would recognize him now, I think I would, though.

Q. You may state whether they or either of them were living upon the premises or had any improvements on them at that time?

A. No.

Q. State whether or not there was anybody representing them on the premises at that time?

A. No, sir.

Q. Do you know Mr. Kreuter?

A. Yes, sir. There are two brothers of that name.

438 Q. That is Charles Kreuter.

A. I know him.

Q. State whether he was living on these premises at that time?

A. No, sir; he was not.

Q. State whether at any time since you have known the lands Annie R. Kean or Samuel A. Kean lived upon the lands?

A. No, they never did.

Q. State if any one was living upon the premises, or has lived upon them since you knew the land, claiming to act through or under Annie R. Kean or Samuel A. Kean?

A. No sir, there never was.

Q. What, if anything do you know about the meander lines upon these sections?

A. Yes, I know something of them.

Q. State whether or not during the time since you have known these lands in 1860 anybody has resided upon these sections between the meander lines and the lake?

A. The first is section 18, you say?

Q. Yes.

A. South half?

Q. Yes?

A. No.

Q. Now take 19, state whether or not anybody has resided between the meander lines as established by the Government survey and the lake?

A. Yes, there was a man named John A. Smale, lived in section 19, between the meander lines and the lake.

Q. What became of him?

A. Well, he trotted off to Wisconsin; I think he is dead.

Q. How long did he stay there and when did he leave?

A. Oh, I don't remember, he stayed there until Judge Drummond and Gresham made a decree against him, or in favor of Mrs. Forsyth.

Q. Then he staid there, as I understand from you, until he was ousted by the decree of the Federal court?

A. Yes sir.

Q. Did anybody follow him in possession there?

A. I am not positive at this moment whether there was or not. There was a man on there in connection with those people in section 7, and I have a sort of an impression that he went there for a short period after Smale left, but I am not positive about that.

Q. How long has it been since any one lived there on that meander, between the meander line and the lake?

A. Well, that would be at the time of the decree; the decree will show the date; I cannot remember the date now.

439 Q. Supposing that was in 1879, was there anybody in possession after that?

A. No.

Q. Did anybody live there, anybody build any fences there after that?

A. No.

Q. Or do any other kind of work there?

A. No.

Q. Take section 13, or more particularly known as lots 1 and 2, survey of 1834 section 13, township 37, range 10?

A. Yes, there was a man at one time, but exactly what year he lived there, I don't know; a man named Reid, a justice of the peace, over somewhere in the country.

Q. How long has it been since he was there?

A. He left there, I think, before the decree was entered.

Q. The decree against Smale in the United States circuit court?

A. Yes.

Q. Has there been anybody residing on those premises since between the meander line and the lake?

A. No.

Q. Nobody built any houses, fences, or cut timber, or done anything else there?

A. No; O, there might be people stealing there.

Q. Now take lots 3 and 4, survey of 1834, section 12, township 37, range 10, who, if anybody, has resided upon them since you have known them?

A. Not any one, except a man named Felt; how long he was there, I don't know, at this moment I could not remember how long he remained on the ground.

Q. What lot do you say he was on?

A. Lot 4; he claimed to be south of the south line of lot 4.

Q. But as a matter of fact where was he?

A. Well, I really never surveyed it to ascertain the fact.

Q. Where was he with reference to the meander line and the lake?

A. It was very close to the meander line.

Q. When did he leave there?

A. Well, he left there I think at a pretty early date.

Q. When did he leave there with reference to your sale of the lands to William W. Green, November 10, 1881?

A. O, it was long prior to that.

Q. Who, if any one lived on the premises after that?

A. No one.

Q. Who, if any one, built any fences or houses on them after that?

A. No one.

440 Q. Or did any plowing or anything of that kind?

A. No one.

Q. Are you acquainted with lots 1, 2 and 3 in section 24, township 37, range 10?

A. Yes.

Q. Who, if anybody, has occupied these lots since 1860?

A. No one has occupied the lots, but there was a man who pretendled to belong to the noble army of squatters, that lived on the marggin of Wolf lake, at the State line.

Q. Do you recollect his name?

A. No.

Q. How long did he live there?

A. Well, I don't know.

Q. How long since did he leave?

A. O, he has gone long ago.

Q. When did he leave, with reference to the conveyance by yourself and wife to William W. Green?

A. Well, he was not there then.

Q. You may state whether anybody has been there since then?

A. Not that I know of.

Q. Who was in possession of these lands at the time of your and your wife's conveyance to William W. Green, November 10, 1881?

A. Mrs. Forsyth.

Q. What was she doing with the land?

A. Why, she was paying taxes.

Q. Is that all?

A. Oh, no, she had some animals pasturing there, and also a club; I think sold some grass on some of those lands described in your question.

Q. Do you know anything about these lakes, Wolf lake and Lake George I believe?

A. Yes, sir.

Q. How long is Lake George?

A. I think about a mile, and three-quarters.

Q. How wide is it?

A. About three-quarters of a mile.

Q. How long is Wolf lake?

A. Well, if you take it from the extreme southern end in section 24 to Lake Michigan in section 36, it would be three miles and a halff long.

Q. What part of that distance, if any, is called Wolf river?

A. The mile in section 1, next to Lake Michigan.

Q. How long have you known those lakes?

A. Since 1857.

Q. You may describe them at that time?

A. They were very full of water at that time, much more so than they are today. The outlet of that Wolf lake was then closed up.

Q. Do you know how deep the water was at that time?

441 A. No; the survey made by the United States engineers would show that, but I don't remember exactly what that is; I remember it in parts.

Q. How was it as to navigation at that time?

A. Oh, it was very good water for navigation of certain kind; of course it would not hold a 74-gun ship.

Q. What as to the fact as whether ships did come into it since you have known it?

A. Oh, I don't know of that; I have heard of it, but I don't know it.

Q. How do the lakes compare in size now with what they were when you first knew them, Lakes Wolf and George?

A. Oh, the water is lower because it is lower in Lake Michigan and it will stay low in them as long as the water remains low in Lake Michigan.

Q. What, if anything do you know as to the water receding from the meander line?

A. I can tell you a curious fact about that, for one mile in section 12 the meander line was run of Wolf lake on the ice.

Q. Have you your receipts for which you paid taxes on this land?

A. Well, I expect so.

Q. Would you attach a copy of them for the years 1878, 1879, and 1880 and if you paid the taxes for 1881, a copy of the tax receipt of 1881, and have them marked Exhibit "A"?

A. I will if I can find them.

Q. You know Henry O. McDaid, do you?

A. I did.

Q. Where did he live along about 1880 and 1881?

A. In Chicago.

Q. Do you know whether he had any personal property in Lake county at that time?

A. No, I don't know; I never knew that he did own any personal property in Lake county.

Cross-examination by Mr. FENNELL:

—. In reference to the payment of the taxes, do you remember at this time each particular payment of tax, on what section of land, and when and to whom you paid it?

A. The last question I can answer. It was paid to the treasurer of Lake county.

Q. As to the rest of the question?

A. Well, it was paid on all the lands which Mrs. Forsyth owned at one time.

442 Q. You do not mean it was paid for all the years at once time?

A. O, no, it was paid at the proper time in each year.

Q. Have you any present recollection of each specific payment of those taxes?

A. I do not understand that, in view of the answer I have made already.

Q. When and to whom and what land did you pay the taxes for the year 1881?

A. I didn't say I did pay them.

Q. Or for the year 1880?

A. There were paid at Crown Point, to the treasurer; as to the date it would be most miraculous, I think, if I could remember the day.

Q. Did you pay them to the treasurer in person?

A. Sometimes I did and sometimes ——

Q. I mean in 1880.

A. Well, I cannot tell; sometimes I paid them to the treasurer in person at other times I paid them through Mr. Allman.

Q. Do you remember paying the taxes in person to the treasurer for the year 1879?

A. Oh, no, I don't remember what years I paid them in person; I generally paid them in person.

Q. Under what description did you pay the taxes?

A. According to the United States description.

Q. Of the first survey of 1836?

A. Oh, that was the only survey that I knew, the legal survey; the other is a devil of a fraud, if you will excuse the expression.

Q. Coming to the question of possession, do you know where that cottage was erected on the east side of Lake George by Kean, commonly called the "Kean cottage"?

A. Do I know where it was?

Q. Yes.

A. Yes, I do.

Q. Where was it?

A. It was on the margin of the lake, on the southwest corner of block 2, in that section.

Q. Between the meander line and the lake?

A. O, I don't know anything about that meander line, really it is an imaginary thing anyhow a fiction of the imagination.

Q. When and by whom was that cottage built?

A. I don't know who built it; it was built during the period of that squatter movement.

Q. About what time?

A. O, we will say in the 70's; I cannot now remember the exact date.

443 Q. Was it prior to 1874?

A. Well, I couldn't say it was in the 70's anyhow, that is the nearest I can come to now unless I go to documents, which I can do very readily.

Q. Tell us the history of that squatter movement; tell us all you know about it?

A. Well, there is a good deal of it that I can tell you that I don't know about. The first knowledge I have of it was through an old surveyor in Indiana who had been engaged in what I call getting something for nothing all his life. He was then as poor as Job's turkey—I mean that literally. He died here in Chicago, on Canal street. Now, strange as it may appear, I don't remember his name at this moment; if anybody should happen to name it I could recognize it. A man by the name of Smale attended to him somewhat, or pretended to have done so when this engineer was sick,

and on his deathbed; and among the dead man's papers he found a survey, made by that engineer of the lands and meander lines and so on around Lake George and proceeded to squat, being guided by those field-notes and what other papers there were.

Q. How many of those squatters were there?

A. From first to last?

Q. Yes, sir?

A. Well, as near as I can remember there were six different and distinct ones.

Q. Are you aware that John A. Smale was dead when that decree was entered?

A. Well, I have some indistinct recollection that that was so, but I dont know it; I say that that was the case.

Q. Are you aware that the alleged title to the land occupied by the Smales was in Sarah Smale, and not in John A. Smale?

A. I was not aware of it. Their private matters, of course, I did not know it.

Q. Who first occupied the Kean property?

A. I don't know sir.

Q. Do you remember when Mr. Kean's mother lived there?

A. Well, I remember the fact of her living there, trudging through the heavy sand, an old woman, for years tredging through the heavy sand going down to that cottage, and I said to myself, "Her son is a dam-scamp or he would not permit his old mother, on the brink of the grave to do that sort of thing." That is what I said, and I say it now.

Q. Do you remember when Charles Kreuter moved into that cottage?

A. No I don't know; that cottage, you remember is on the Martin Nolan piece of land lot 2 in section 18.

Q. Has not Charles Kreuter continually occupied that house
444 from the time he first took possession until the present time?

A. Well he might be living a dual life, of course he might but he built a house certainly on the north of section 18 on Mr. Tully's land, bought land from Mr. Tully and has been living there for certainly ten years back.

Q. Has he not furniture and some one living in this Kean property?

A. O, I really don't know; I never nose around in that way, there might have been chickens or dogs or anything else there for all I know

Q. Beginning at the south end of Wolf lake in section 34 have you a fence around lots 2 and 3 in section 24?

A. No sir.

Q. What particular act of possession have you done in reference to those lots?

A. I have made hay there.

Q. When did you last make hay on those two lots?

A. Well, I think it was prior to 1880, the exact year I cannot give.

Q. You must have cut the hay between the center line of the section and the water?

A. What center line, east and west or north and south?

Q. East and west.

A. Yes, parallel with Wolf lake running to the northeast.

Q. In reference to lots 1 and 2 section 13 is there any fence around those lots or either of them?

A. Not that I know of.

Q. What possession have you had of those two lots?

A. Well, we have pastured there.

Q. What grows upon that little neck of land there (indicating on map).

A. A nice growth of trees, next Lake George.

Q. What have you pastured upon those two lots?

A. Domestic cattle.

Q. How many head have you pastured upon those two lots?

A. Oh, I don't know, sometimes I had more sometimes I had less, I couldn't tell you.

Q. Did any other people's cattle come there?

A. O, certainly they have but we have driven them off, repeatedly, but I never have allowed my cattle to go on any man's land.

Q. With reference to lots 3 and 4 section 12 is there any fence around those lots—south half of section 12, I mean?

A. There is a fence on the east side of the range line which divides those lots from the lands east of us in section —.

Q. In what direction does that fence run?

A. North and south.

445 Q. Are there any fences running east and west?

A. Yes, at the south end of lot four there is a fence on the north side of it.

Q. You say at the south end of lot four?

A. Yes.

Q. There is a fence where?

A. That fence runs east to the lake, and therefore it is in section seven.

Q. There is none then in section 12?

A. No, except as I have explained.

Q. With reference to the other lots, are any of them fenced in?

A. Which other lots?

Q. Mentioned by you in your examination-in-chief?

A. In what section?

Q. Well, section 18?

A. Yes, there is a fence there.

Q. Where?

A. At the north end of the section and south a quarter of a mile from east to west and from north to south.

Q. On what side of Lake George is it?

A. On the east side.

Q. What, if any fences are on 19?

A. Well, sir, I believe there is neither a road, fence nor house on it; that is my belief.

Q. Do you remember when a brother of S. A. Kean, lived down there?

A. I have seen a brother of S. A. Kean down there in that immediate neighborhood. As I never saw him in the house, I don't know that he lived there.

Q. At the time of the squatters' taking possession did you make any protest against the survey that was made at that time?

A. You bet I did.

Q. In what manner?

A. In the first place I pulled that fellow Smale's house down, and part of it was and in the next place I went into court in an ejectment suit.

Q. What else?

A. Well, I went then into the United States court. Now, I don't know, I think that is enough for one poor man to undertake.

Q. What United States court?

A. For the district of Indiana, held at Indianapolis.

Q. Against whom?

A. Well, I suppose it was against Smale, I haven't the documents now before me, but I presume that it was—hold on, I have
446 not been through these things—now it begins to dawn on me that there was a woman named Kean married a kind of a crazy man who went to the asylum and died. They lived on the point a little to the south of Smale. The name has slipped my memory.

Q. Did you not contest the approval of that survey before the Interior Department?

A. Yes sir.

Q. Did you not appeal from the decision of the Commissioner of the Land Office to the Secretary of the Interior?

A. I think so.

Q. And nevertheless did he not approve of the survey?

A. General Williamson was the Commissioner of the Land Office at the time that survey was authorized; it was authorized by affidavits made by two perjured men in the neighborhood who swore that it was dry land fit for agricultural purposes that is the fraudulent foundation for the survey, and I believe from information I received from various sources (now you can strike this out if you want to) that the man Williamson was in partnership with those scoundrels.

Q. Did you present those facts before the Secretary of the Interior?

A. Well, I don't know; he was another damned fraud called—what is this his name is? that big German with the big spectacles.

Q. Carl Schurz?

A. Yes, knows as much law as my yellow dog.

Redirect examination by Mr. JOHNSON:

Q. You say there was six squatters on this land?

A. I said there were six distinct squatters.

Q. Now a question Mr. Fennell asked me brings a seventh to my

mind. You may state whether they were all on this land or on the other land?

A. Some of them were on other land.

Q. Can you tell about how many were on this land?

A. Yes.

Q. About how many?

A. Four.

Q. Give us their names as near as you can?

A. Felt, Reid, Smale and this crazy brother-in-law of Kean's here in Chicago.

Q. Now as to the Kean cottage you may state whether that is there or not?

A. I don't know sir, I have not been out there for a long time.

Q. What, if anything, did you ever do to assert title for your wife as to this land?

A. What land?

447 Q. Where the Kean cottage was?

A. I had nothing to do with that.

Q. Where was that?

A. I have said it was on lot 2, section 18, belonging to Martin Nolan.

Q. State if that is where Kreuter resides if you know?

A. I don't — of his ever residing there.

Recross-examination by Mr. FENNELL:

Q. What did Kreuter do with reference to occupying or using these lakes while he lived in that cottage?

A. I don't know about his living in that cottage.

Q. Well, at any time?

A. He is all the time occupied in trespassing over other people's lands to get on to the lake to fish and to shoot duck.

Q. Has he not kept a number of boats there for hire?

A. Why of course, he is living without doing anything.

Q. And made his living renting boats to other people?

A. Yes, renting boats tied up to Mrs. Forsyth's land.

Redirect examination by Mr. JOHNSON:

Q. About when did Kreuter first come there?

A. Well, sir, Kreuter has been in that neighborhood of the lake for so many years back that I can't remember when he first came there.

Q. You may state whether he ever lived on any of this land that we have been taking testimony about?

A. He did; he was my tenant on lot 1 of section 19.

Q. When was he your tenant there?

A. O, that was a great many years ago; it was in the early seventies.

Q. But I understand from you that he was not on any part of this land at the time of the making of this land to Green?

A. Not at all.

Q. Where did you and your wife reside at the time you conveyed the land named in this deposition to William W. Green?

A. In Sheffield, Lake county, Indiana.

448 Q. What personal property did your wife at that time have in the county of Lake and State of Indiana? Give the description of it as near as you can, household, live stock and everything else.

A. Our house had ten or twelve rooms furnished; she had horses, cattle and sheep, how many of each, I don't know, and agricultural implements, plows, harrows, mowing machines etc.

Q. What personal property, if any did she have in Lake county, Indiana throughout the months of February and March, 1882? Give a description of it whether household, live stock or otherwise?

A. My answer to the last question will have to stand as my answer to this one.

Q. What was the value of this property. State as near as you can.

A. About $5,000, I should think; it might be more.

JACOB FORSYTH.

449 OLIVER O. FORSYTH, being duly sworn to testify the truth, the whole truth and nothing but the truth relating to said cause, deposes as follows.

OLIVER FORSYTH.

Direct examination by Mr. JOHNSON:

Q. State your name, age, residence and occupation?

A. Oliver O. Forsyth, 35; Chicago, dealer in real estate.

Q. You may state whether you are the son of Jacob and Caroline M. Forsyth?

A. Yes, sir, I am.

Q. Are you acquainted with lots 3 and 4 in section 18, township 37, range 9, Lake county, Indiana?

A. Yes, I have gone over there a great many times.

Q. Do you remember the circumstance of your father and mother making a deed to William W. Green in November, 1881?

A. Yes, sir.

Q. Who, if anybody, lived on those lots at that time?

A. Nobody lived on them at that time.

Q. What improvements, if any were there upon these lots at that time?

A. There were no improvements there that I know of.

Q. Take lots 1, 2, 3, and 4 in section 19, are you acquainted with those?

A. Yes.

Q. Were you acquainted with them at the time of the conveyance by your father and mother to William W. Green?

A. Yes.

Q. Who, if anybody lived on those then?

A. There didn't anybody live on them.

Q. Were there any improvements made on them at that time?
A. No, sir.
Q. Take lots 3 and 4 in section 12, township 37, range 10, Lake county, Indiana, are you acquainted with those?
A. Very well.
Q. Were you acquainted with them at the time of the conveyance of your father and mother to William W. Green, in November, 1881?
A. Yes sir.
Q. What if any improvements were there upon them at that time?
A. There were not any.
Q. Who resided upon them, if any one?
450 A. There wasn't anybody living on them.
Q. Take lots 1 and 2, section 13, township 37, range 10, are you and were you at the time of the conveyance by your father and mother to William W. Green, in November, 1881, acquainted with those?
A. Yes, sir.
Q. What if any improvements were upon them at that time?
A. There were not any.
Q. Who, if anybody lived on them?
A. Nobody lived on them.
Q. Take lots 2 and 3 in section 24, township 37, range 10, Lake county, Indiana, are you and were you at the time of conveyance by your father and mother to William W. Green acquainted with those?
A. Yes, sir.
Q. What, if any improvements were on those at that time?
A. There were not any that I know of.
Q. State if you recollect at any time of your father or mother or either of them, pasturing or cutting any hay on this land?
A. Yes, cut hay on them.
Q. Do you know about what year?
A. Every year for a great many years.
Q. Prior to selling to Green.
A. Yes. There is one thing that I want to say about section 24; near the State line there was an old fisherman.
Q. But you say he was not there at the time of this conveyance?
A. No; I don't think he was, my impression is that he was not.
Q. Do you know his name?
A. No, I do not, I think they called him Charlie the fisherman.
Q. He has departed from there long since, has he not?
A. Yes.

Cross-examination waived.

OLIVER O. FORSYTH.

451 STATE OF ILLINOIS, } ss:
County of Cook, }

I, Harry F. Lee, a notary public within and for said county, hereby certify that the above-named Jacob Forsyth, and Oliver O.

Forsyth were by me first duly sworn according to law, to testify the truth, the whole truth, and nothing but the truth, relating to said cause; that their depositions were reduced to writing by this deponent that the said plaintiff attended by Mr. William Johnston, its attorney, and that Mr. William P. Fennell appeared on behalf of the defendants, Samuel A. Kean, Henry O. Felt and Sarah Smale; that said depositions were taken at room 800, No. 84 Van Buren street, in the city of Chicago, county of Cook, State of Illinois, on the 10th day of September, 1895, between the hours of 8 a. m. and 6 p. m. of said day; that the taking of said depositions was adjourned as herein appears.

In testimony hereof I have hereunto set my hand and notarial seal this 20th day of September, 1895.

[SEAL.] HARRY F. LEE,
Notary Public.

Commissioner's fee $21.00 paid by plaintiff's attorneys.

452 *Notice to Take Deposition.*

STATE OF INDIANA, } ss:
Porter County, }

In the Porter Circuit Court, October Term, 1895.

CALUMET CANAL AND IMPROVEMENT COMPANY }
vs. }
CHARLES B. ALEXANDER, ANNA R. KEAN, SAMUEL A. KEAN, }
George B. Mason, *et al.* }

The defendants in the above-entitled cause are hereby notified that on the 10th day of September, 1895, at room 800, number 84 Van Buren street, in the city of Chicago, in the county of Cook and State of Illinois, between the hours of 8 o'clock a. m. and 6 o'clock p. m. of said day, before some officer authorized to take depositions, the plaintiff will proceed to take the depositions of Jacob Forsyth, Clark Forsyth and Oliver O. Forsyth, witnesses to be used in evidence on the trial of said cause, and will, if necessary, continue said taking from day to day until said depositions are completed.

Dated this 3rd day of September, 1895.

WILLIAM JOHNSTON,
Att'y for Pl'ff.

We acknowledge service of the above notice and waive dedimus and certificate of official character of officer before whom said depositions are taken, this 3rd day of September, 1895.

THOS. J. WOOD,
Attorney for Kean & Kean.
W. C. McMAHAN,
Attorney for Mason & Mason.

453 *Testimony of George W. Lewis,*

a witness for plaintiffs, being duly sworn, testified as follows:

Examined by Mr. JOHNSTON:

Q. What is your business?

A. I am superintendent of the Calumet Canal and Improvement Company.

Q. How long have you been such?

A. About three years.

Q. Where have you resided during that time?

A. During that time at East Chicago.

Q. Are you acquainted with this land around Wolf lake and Lake George?

A. I have been over it to a considerable extent during that time.

Q. What is the fact as to whether anybody has been living on it since you have known it—known these lots?

A. With one exception and that with our permission, there has been no person on it.

Q. Who is that?

A. Fishing Charley Grotriske.

Q. State whether there are any buildings or fences on that?

A. I have known of none aside from this of Fishing Charley.

Q. Are you acquainted with that land?

A. Yes.

Q. What, if any improvements have been made on them, during that time:

A. You speak of this surrounding the lake.

Q. Yes?

A. None during our ownership.

Q. State what acts of ownership have been done upon the land by anybody there in plowing, cutting the grass or anything of the kind there?

A. No, none other than ordinary trespassers going on and cutting hay, etc.

Q. Who are they?

A. I think once in awhile they in and cut out a little hay, come from Hammond and different points.

Cross-examined by Mr. FENNELL:

Q. I understand you to testify as to land surrounding this lake?

A. I testify as regarding land owned by the Calumet Canal and Improvement Company.

Q. Please describe the land of this company about which you are testifying?

A. The land owned by this company being a strip of land
454 between Wolf and Lake George and the south end of this lake; the low lands in section 19; the south end of section 18 is of a somewhat like nature and around the east side of Lake George.

Testimony of Ellis Bennett,

a witness for the plaintiff, being duly sworn testified as follows:

Examined by Mr. JOHNSTON:

Q. Where do you reside?
A. Wolf lake—in the State of Illinois—Chicago.
Q. How long have you lived there?
A. I have lived there off and on for—since 1870.
Q. How long have you known the lakes?
A. Since 1868.
Q. Did you know where John A. Smale lived?
A. I could not describe the place; I knew all that country through there.
Q. You heard Mrs. Smale testify on yesterday?
A. Yes.
Q. What kind of a strip was that?
A. Well, it was probably a strip a rod wide; in some places maybe a little more; it runs probably three-quarters of a mile long.
Q. Along the east side of Lake George?
A. Yes.
Q. State whether or not that was at any time covered with water?
A. I know it was covered with water almost every year up to eight or nine years ago. When we have a very dry year there may be some odd places not covered.
Q. What has caused the difference in the last eight or nine years?
A. The canal company put their dredge in there and began ditching through there; put a dredge ditch about 14 or 15 feet wide from the Calumet river into Wolf lake; and from Wolf lake into Lake George.
Q. State what effect that has had on the water?
A. It has lowered the water in the neighborhood, I should judge, about two feet.
COURT: When was that done?
A. About nine years ago.
455 Q. Up to that time, as long as you have known the lakes, how did they compare in size from year to year?
A. Well, they were about the same from year to year. In the spring of the year there would be an overflow. There was a kind of a road run through there between them and a row of trees there. Maybe in some places there would not be any and in other places would be a road; sometimes it would be covered with water; sometimes in the spring a boat could pass through between Wolf lake and Hyde lake.
Q. Take it from year to year?
A. If we had a dry season like, for instance this year, the water was lower. The evaporation of the water in Wolf lake in a dry season was from half an inch to an inch a day.
Q. And taking it from year to year during those years how would it be?

A. It run the same all along.
Q. From the time that you knew it?
A. Up to eight or nine years ago.
Q. That is on account of digging the canal?
A. Yes. In 1874 it was very dry.
Q. In 1874 it was dry then?
A. Yes, that is the year so many of them squatted around Wolf lake.

Cross-examined by Mr. FENNELL:

Q. Is it dry now?
A. Yes.
Q. About the same as it was then?
A. No; it is drier now than it was then.
Q. Does water run uphill or downhill?

Objected to by counsel for plaintiff and the court sustained the objection.

Q. You say that Wolf lake empties into Calumet river?
A. Yes.
Q. Where does Calumet river empty?
A. It has been dammed up this summer.
Q. Where does the Calumet river empty? Into what?
A. The Calumet river empties into Lake Michigan.
Q. Then Lake Michigan must have been lower than Wolf lake?
A. No, when we have a south wind or a west wind right along steady for maybe three or four days—a strong west wind of course Lake Michigan is lower. Take it this summer we had most west winds you could not notice the water running out at the north
456 end; consequently it is lower on this edge of the lake than the north end. The wind in certain directions it will run out. When we have a dry summer it evaporates.
Q. Are you aware that water has been pumped from Lake Michigan into Wolf lake.
A. Yes, they are pumping there now.
Q. What is the purpose of pumping the water into the *the* lake?
A. For the purpose of getting ice.
Q. To keep up their riparian rights?
A. No; the ice companies get the privilege of damming up across there where it runs into Calumet lake.
Q. They got the privilege of damming it and pumping water in for the purpose of raising it higher?
A. That has been done in order to make ice; they didn't have to do it until this canal was cut through there.
Q. They have to do it now?
A. Yes, sir.
Q. And have for several years?
A. Yes, ever since that canal went through there pretty much.
Q. Is that channel dammed up that leads to the Calumet river?
A. Yes, it is dammed up at present.
Q. If that channel was opened and if they had not pumped water

into the lake from Lake Michigan what would be the effect upon Wolf lake and Lake George?

A. It would be a good deal drier than it is now.

Mr. JOHNSTON: We now rest.

Mr. MCMAHAN: The evidence must show that the taxes were paid before these tax sales.

Mr. JOHNSTON: He says there were no sales.

Mr. MCMAHAN: I have evidence there were sales and introduced my deeds.

Mr. MCMAHAN: I now offer in evidence an agreement between Kean *et al.* and Mason. It was marked Exhibit "A."

And thereupon the agreement between Kean *et al.* and Mason was read in evidence and is as follows:

457 *Agreement—Kean & Mason—in Relation to Tax Lien.*

STATE OF INDIANA, }
Porter County. }

Porter Circuit Court, October Term, 1895.

CALUMET CANAL AND IMPROVEMENT COMPANY }
vs.
CHARLES B. ALEXANDER ET AL. }

For the purposes of the trial of this cause it is hereby stipulated and agreed by and between Anna R. Kean, Samuel A. Kean, Henry B. Felt, Orson Felt, and Sarah Smale defendants, and Henry B. Mason, cross-complainant, that the lands mentioned in the cross-complaint of said Henry B. Mason, *was* on the 6th day of March, 1882, at the regular tax sale, sold for the sum of $2,507.60, that being the amount for which said lands were returned as delinquent for taxes for the years 1880 and prior years.

And that said Henry B. Mason shall as against the said Keans and other defendants above named have the said amount together with interest at the rate of six per cent. declared a lien upon the said lands and that there shall be a decree in favor of said Mason foreclosing said lien as against the said defendants herein mentioned.

WILLIAM B. FENNELL,
Their Attorney.
W. MCMAHAN,
Attorney for Henry Mason.

458 The testimony of John Fisher, Frank N. Rossiter and Charles Kreuter as taken by the stenographer on the trial of the cases of Wilcox *vs.* Kean, and Wood *vs.* Renville, and the testimony of Samuel A. Kean, on the former trial of this case, as taken by the stenographer, was by agreement read in evidence in the trial of this case and the evidence of the said witnesses so read in evidence is as follows:

459 WILCOX vs. KEAN.
WOOD vs. RENVILLE.

DECEMBER 16, 189–.

Evidence of Frank N. Rossiter,

being duly sworn, testified as follows:

Examined by Mr. YOUCHE:

Q. What is your name?
A. F. N. Rossiter.
Q. Where do you live?
A. Chicago, Illinois.
Q. How long have you lived there?
A. I have lived there continuously since February, 1890. I was away about twelve years. I left there in 1876. I lived there from the spring of 1868 until August, 1876.
Q. What was your business?
A. Surveyor and civil engineer.
Q. How long have you been such?
A. Since 1868.
Q. Are you acquainted with the lands in controversy in this action?
A. Yes, sir.
Q. Are you acquainted with the location in the northwestern part of Lake county, known as George lake and Wolf lake or Mud lake?
A. Yes, sir.
Q. Have you ever done any surveying in any of these lakes?
A. Yes sir.
Q. Describe the character of the lake which is indicated upon this Government plat, township 37, range 9 west, in Lake county, Indiana, as surveyed and made in 1836?
A. I think the survey was made in 1834 and '35, the original Government survey.
Q. Describe the character of the lake.
A. Its dimensions etc.?
Q. Yes, its general character.
A. I think the township boundaries were made in 1834 and the subdivisions in townships in 1835. The lake covers portions of the southwest quarter of section 19, township 37, and range 9; and portion, more than about half, of the north half of section 19, and
460 about a little more than two-thirds of section 18, township 37, range 9, and a portion of the south half of section 7, town 37, range 9, and it extends over the township line into section 12, and the south portion of section 10, town 37, range 10; and the northeast part of section 24, township 37, range 10.
Q. What is the character of the lake?

A. Well, it is water surface, and the bed of the lake is plain sand, mostly coarse sand surface.

Q. And its character as to permanence——

COURT: Does your examination relate to the time of this survey?

Mr. YOUCHE: It relates to the time when he knew it.

Q. When did you first know it, when did you first see it?

A. I think in 1867 or 1876; the first surveys I made there were in 1874.

Q. I suppose your evidence relates to the lake from the time you first saw it up to the present time, does it——

A. Yes.

Q. Well, go on. What about its depth, general depth, average depth?

A. Well, the depth of the lake is different at different times.

Q. Take the average depth, average stage of water.

A. You mean the average stage of water over the whole surface, what it would naturally cover?

Q. Yes.

A. Well, I should say about two and a half feet, probably.

Q. The average depth:

A. Yes, sir. Take the whole surface of the lake.

Q. What is its greatest depth:

A. Well, I should think in high water it would be probably five feet, possibly more than that; five and a half.

Q. What is its surrounding? What kind of land is it around it?

A. Sand ridges and sloughs.

Q. What kind of vegetation?

A. It is weeds and coarse slough grass.

Q. On the ridges, originally, before it was cut off?

A. Some scrub-oak timber and underbrush.

Q. What about its shore lines, as to whether or not they are reasonably well defined and distinct?

A. Yes sir; they are.

Q. How is the shore of the lake as to being a sandy beach or not?

A. Well at high-water point there is on the east side a portion of the length a sort of ridge, a narrow ridge.

461 Q. A beach?

A. Yes, sir; a sand ridge.

Q. As to whether that forms a beach or not?

A. I don't know as I understand your question. The east portion of the lake in high water extends over in places over a large surface of ground.

Q. Take the average stage of water, as to whether or not there is a distinct, well-defined limit of the lake?

A. There is on the boundaries of the lake; in some places it is not.

Q. As to permanence of the lake since you have known it?

A. It is permanent; it is there.

Q. As to whether or not it has been about the same all the time?

A. Yes; in a high depth of water.
Q. The depth between high and low water?
A. High and low water.
Q. As to whether it has remained about the same except with those variations, high and low water?
A. Yes, sir it has remained the same.
Q. Take lot No. 2 in section 18—but before I come to that, there is a part of the lake that is deeper than the rest; a part that has a greater depth than the rest: in speaking of the deepest part of the lake——
A. Yes, sir.
Q. Where is that?
A. Opposite the center of section 18; around about the line of section 18; it is pretty well toward the west edge of the water; I should say within an average of three or four hundred feet of the west shore.
Q. Can you upon this map of the lake here indicate about where the deepest part of the lake is?
A. I can, I think, as far as the lot is concerned.
Q. Please do so to the court.

(Witness indicates on the map.)

A. I surveyed from this point to that (indicating). I did not go down as far as the south line of 4 projected.
Q. How far from the west line of the section is that deepest part of the lake,—the west line of section 18?

Objected to on the ground that there is no west line, or section line——

Q. I mean what would be the west line if it were extended, if it were produced?
A. I never have run the west line of the section through, but by calculations it would throw that lower point in the lake, about an average, I think, of 250 or 300 feet, possibly; somewhere in
462 that vicinity.
Q. From the west line of what the section line would be?
A. Yes sir.
Q. Now, how as to the depth of water? What is the depth of water along at that deepest channel?
A. I measured it when the water was very low.
Q. Take it at an ordinary stage of water.
A. I think it would be over four and a half feet.
Q. I understand that you made a survey of that?
A. Yes sir.
Q. That you know from your own knowledge substantially?
A. It was about four feet. At the time I measured it the water was low.
Q. Take the average stage of water in the lake how much deeper would the depth have been at that place?

Objected to on the ground that he has stated all he knows about it.

COURT: He seems to be familiar with all portions of the lake; if he has knowledge of it he may state.

A. Five feet.

Q. Have you measured the depth between this deepest place and over toward the east shore?

A. Yes sir.

Q. How does the depth run, how would the depth be—take the average stage of water?

A. Well, the surface of the lake is almost as a plane surface. That is—you understand what I mean.

Q. The surface is plane?

A. The bed of the lake.

Q. The surface, the bed of the lake is almost a plane?

A. A plane surface. I found in making soundings of that portion in each 100 feet is regular; $\frac{1}{10}$, $\frac{2}{10}$, $\frac{3}{10}$ as the case might be. The water of the deepest place in the lake to where there was no water gradually decreased until it run out entirely.

Q. That is true in front of these two lots?

A. Yes sir.

Q. You made soundings and measured it?

A. Yes sir.

Q. Have you seen this place where that little shanty or Kean house is?

A. Yes sir.

Q. Where is that with reference to the lake?

A. The house is about near the south line of lot 2, I should think
463 100 or 150 feet north of the south line of lot 2, and possibly 50 feet east of the water in the lake at a medium stage of water.

COURT: Do you know where it is with reference to the meander line?

A. I think about 100 feet west of the meander line; it may be a little more than that, probably about 200 feet.

Q. Is this lake connected with any other lake in a state of nature?

A. In a stage of high water—yes.

Q. What other lake?

A. Wolf lake.

Q. Where does Wolf lake lie?

A. It lies west of Lake George.

Q. And where does this lake empty its surplus waters, this lake, this Lake George it is called?

A. Into Wolf creek.

Q. This lake that you have been testifying about, its general character and depth, by what name is it now generally known?

A. So far as I know,—Lake George.

Q. Lake George?

A. Yes, I heard it called Mud lake, and other names. I think that is the general name.

COURT: I think upon the Government plat there are no names given to either one of them. It is just indicated "lake." I think

probably the Government survey did not name any of the lakes, just indicated them.

A. The Government refers to this lake in their meander notes as merely Lake — 17, etc.

Q. Wolf lake, with what is it connected, into what does it empty itself, its surplus water?

A. Into Lake Michigan.

Q. Where?

A. At the north end of Wolf lake.

Mr. FENNELL: I object for the reason if we go into that question it will take another day to try this case; it has nothing to do with this lake or this land. If we have to go into the question as to whether Wolf lake has a permanent outlet or not, we would have a much bigger case, but we would not be any wiser so far as this case is concerned, than we are now.

Mr. YOUCHE: I want to show the general character of this lake. This is one of the peculiarities of the lake. It will become pertinent.

Q. Mr. FENNELL: I object to any evidence as to the condition of Wolf lake or the outlet of Wolf lake, and move that the answer of the witness as to the outlet of Wolf lake be stricken out, for the reason it is immaterial and irrelevant and does not tend to prove any of the issues in the case.

464 Mr. YOUCHE: I want to show how it is fed, how it discharges its waters and where its surplus waters go. I want to show it is connected with Lake Michigan and how it is connected, and how that the height of water in the lake is affected by the water in Lake Michigan.

Mr. FENNELL: All of which we deny.

Mr. YOUCHE: It bears on the subject of its permanency.

COURT: I think, if I am not enlightened any further on the question of materiality,—I think that since you have got from this witness a general description of the lake, and its permanent character, I think I will sustain the objection, then you may make your offer to prove. That will present the question.

Mr. YOUCHE: We offer to prove by this witness, in answer to this question——

COURT: I will sustain the motion to strike out. I think when you have established by direct evidence its permanent character, it is for them, by cross-examination, to show otherwise.

And plaintiff excepted.

Q. Now we ask this question: How does the water in this Lake George correspond with the waters in Lake Michigan? How is its height and depth affected by the height and depth of the water in Lake Michigan?

Objected to by defendant- on the ground that it is immaterial and irrelevant.

And the court sustained the objection. To which ruling and decision of the court the plaintiff excepted.

And thereupon plaintiff, by counsel offered to prove by the witness, in answer to the question, that the waters of this lake are directly connected with the waters of Lake Michigan; that the height of water in this lake is affected by the height of water in Lake Michigan and that in time of high water the water in this lake is on a level with the water in Lake Michigan; and its permanency is enlarged to a certain extent, established by the fact that the connection between the lakes in the manner I offered to prove.

Mr. FENNELL: I guess I will admit that. I want to save time.

Q. You may state, Mr. Rossiter, what the fact is as to whether this lake is permanent, fixed lake, that is Lake George?

A. I think it is.

COURT: Can you determine as to whether or not it has
465 been permanent and fixed lake for 40 or 50 years from the appearance of the lake at the time you first knew it?

A. Just what the record evidence of the Government leaves us; I think the boundaries of the lake are probably permanent where the Government survey made them.

Q. Have you had any experience in measuring, surveying bodies of water like this, in observing their character as to permanency?

A. Yes sir.

Q. Now judging from all the indications of this lake, what is the fact as to whether or not this lake in, say 1832, 1833, '34, '35, '36, '37, was of the character that you have described as to permanency?

A. The best evidence we have——

Mr. FENNELL: That is calling for an opinion, that is a matter not within his knowledge and could not be.

A. I think I answered that question—answered the question the judge asked. The best evidence, the earliest evidence, is the evidence of the Government survey, and that is about 60 years ago.

COURT: They are asking you now, if you can determine what was the character of the lake along about the time of the Government survey, from the general character of the lake, from the time you first knew it, considering all matters there within your knowledge and as to matters which might affect the water in the lake at the time you first knew it.

A. I think the general character of the lake has been the same as it is now.

Q. Was then the same as it is now?

A. Yes sir.

Cross-examined by Mr. FENNELL:

Q. How long is Lake George, north and south?

A. All I know is by the Government survey; it is a little over two miles.

Q. How wide is it?

A. I would say the average width was about half a mile.

Q. What is the greatest width? Is it a mile?

A. No.

Q. Is it three-quarters?

A. I think possibly in the widest point it might be, three-quarters; I don't believe it is quite; it may be possible in the widest point.

Q. Is not there an island in Lake George?

A. Yes.

466 Q. Tell the court where that island is and its character, what you know about it.

A. That island is near the south line of lot 3 extended.

Q. Will you pleasd mark that island on that plat where you made the other marks?

A. It is about—the south edge of the island is on the south line of lot 3 extended. It is east of the center of the lake and about midway between the deepest center of the lake and the east meander line of the lake.

Q. What number of acres of land?

A. The island probably has not to exceed an acre and a half, possibly two acres. I never made measurements across the island. Possibly an acre and a half or two acres.

Q. Are there any trees? What, if any, vegetation is on the island?

A. There are trees and underbrush on the island and some grass.

Q. What is the size of the trunk of the largest tree?

A. I could not say; there are some pretty fair trees, possibly twelve inches through some.

Q. What kind of trees are they?

A. I don't know, I never have been in it; the ordinary trees growing in that country—probably elm, scrub-oak trees of that nature. Undoubtedly the ordinary growth of trees in that vicinity.

Q. Now what do you call the shore line, Mr. Rossiter?

A. The line at high water——

Q. Low water or the average stage of water?

A. The west line of the lake is shown——

Q. I am speaking of the east line of the lake abutting these lots that we are talking about.

A. On the lots there the shore line is narrow; there is sand there with some underbrush, I think, growing on it. I don't think it exceeds eight or ten feet in width, possibly 18 inches high; in places sand ridge that has been thrown up there.

Mr. YOUCHE: Thrown up by the water?

A. It may have been, it might not have been.

COURT: Did the ground there rise abruptly from the water?

A. Yes, what I call the beach of the lake is clear sand.

Q. How far does that run back?

A. At times possibly 300 feet, in that bar and at times the water covers all this over, up to the ridge from the shore line on lot

467 2; there is a portion of lot 2 that has the same kind of shore line; a portion has not; I think the north portion has not; that the shore line on the north line of lot 2 is plane surface if I recollect right.

Q. Where is this apparent shore line that you speak of with reference to the meander line?

A. I never have run the meander lines at all but by calculation the shore line is on these two lots generally west of the east meander line.

Q. How far?

A. Well, it varies in places, I think from 100 to 300 feet,—possibly from nothing to 300 feet. I say I never have run a line out; the shore line is crooked.

Q. And the Kean house is situated on this land between the meander line and the shore line?

A. Yes; there is an abrupt turn in the lake line there in what I am trying to define as shore line about on a line between the two lots.

COURT: Does the evidence show how long that house has been there?

Mr. FENNELL: No.

Mr. YOUCHE: How long according to your evidence.

Mr. FENNELL: More than fifteen years; I don't think it has been twenty years.

Mr. YOUCHE: There is no evidence of title by possession, your honor.

Mr. FENNELL: I don't think we have been back twenty years; yet I think we have been pretty near it.

Q. That land between the meander line and the shore line on which the Kean house is built has vegetation upon it has it not?

A. Directly between the Kean house and the shore line it has, taking the width of the Kean house; if you go south to about the line between the lots there is no vegetation in places.

Q. Well, there is vegetation in some places and none in others?

A. Yes, sir.

Q. Didn't you assist in making a new survey which is commonly called the Wilcott survey of the bed of the lake?

Objected to by Mr. Youche.

Mr. FENNELL: It is for the purpose of testing his familiarity with the land.

A. I cannot answer that question without seeing the field-
468 notes of the survey. I made surveys, I think, of the lake beds in that vicinity. That is Lake George, Wolf lake and Hyde lake in 1874, I believe, and a portion of the time I was employed by Mr. Wolcott and a portion of the time I was not.

Q. I would like to ask you if you are aware that Mr. Wolcott surveyed the bed of Lake George by direction of the United States Government?

Objected to on the ground it is not cross-examination——

A. I would like to say this as far as the last question is concerned I would like to put myself on record correctly. There is some little talk about that survey in both States; I was working for Mr. Wolcott at the time he made those surveys. He was deputized by the United States I never saw or knew what there was in the Illinois portion of that survey until recently—until within the last three

years. They have tried to bring me in there as a party to that survey.

Q. I want to ask you, Mr. Rossiter, what is the lowest depth of water that you ever saw in Lake George or Mud lake; how near dry did you ever see it or know it to be?

A. I never saw it when I had an opportunity of testing the depth of it, but what it was about four feet in the deepest place—possibly three feet and $\frac{9}{10}$ths, but I think in some places four feet.

Q. Did you know of its ever having been nearly dry at one time?

A. No sir.

Redirect examination by Mr. YOUCHE:

Q. I understood you to say that this Kean house that they talked about is located between the lake and where you understood the meander line was?

A. He asked me between the shore lines.

Q. As between the lake and this meander line? Is it situated between George lake and the meander line on the east side of it? As a matter of record it is in Lake George, but take the ordinary water line as to whether or not it is not between the ordinary water line and the meander line?

A. I think at an ordinary stage of water, I think the water would come within 50 feet of the house and any way up to the boat-house, which I would say is 250 ft. of the house at an ordinary stage of water.

469 Q. When did you first see that house?

A. Along in the early—possibly February, 1891.

Q. What kind of a house is it?

A. It is a small board house. I paid no attention to it.

Recross-examination by Mr. FENNELL:

Q. You say you saw Lake George as early as 1869?

A. Yes.

Q. You say you did not see that house until 1891?

A. That is my recollection that I did not see it until 1891.

Q. If it was there you had an opportunity to see it?

A. Yes, it might have been there. I made a survey of that land in 1874; I could not swear it was there. There were different houses on that when I made the survey. But I could not locate that without my field-notes.

470 *Testimony of John Fisher.*

was the next witness and being sworn, testified as follows:

Examined by Mr. YOUCHE:

Q. You have been county surveyor of Lake county?

A. Yes.

Q. How long were you county surveyor?

A. About 31 or '2 years.

Q. How long have you lived in Lake county?
A. About 34 or 35 years.
Q. You know this lake here known as Lake George?
A. I do.
Q. How long have you known that lake?
A. Well, about twenty-five years.
Q. Have you frequently surveyed lands around there?
A. Certainly I have.
Q. Have you ever assisted in measuring its depths?
A. I have.
Q. When first?
A. 1876.
Q. At what was the stage of water when you measured it? At ordinary stage of water?
A. In the month of July, quite a dry time, July 21, 1876.
Q. As to whether or not the water was an ordinary stage, or lower than usual?
A. Ordinary stage of water. That is my recollection.
Q. You may describe this lake as to permanence taking into consideration its character from the time you first saw it down to this time.
A. I would call it permanent.
Q. Permanent lake?
A. Yes, sir.
Q. What did you find when you measured it as to depth?
A. Some places quite deep and in other places not so deep.
Q. Where was the deepest part, the channel of the lake, the center of the lake as to depth? You can indicate it here on this map.
A. I have got notes of the whole business.
Q. They can draw that out if they want to. Indicate with a pencil in a general way——
A. Over the west edge of Lake George on the south line of section 7, bearing east 2, 3 feet.
Q. What I want to get at, Mr. Fisher, indicate a line running down this way that shall indicate the deepest channel, the deepest part of the lake. Look at your notes.
A. From this point, from a point where the section line
471 strikes Wolf lake. The east side of the lots toward the outlet between the two lakes is like this:——
Mr. FENNELL: It runs from the northeast corner southwesterly?
A. Southwesterly towards to the outlet. I don't go straight down.
Q. What is the depth of the deepest part of the lake, the channel of the lake?
A. 6.2 feet.
Q. By actual measurement?
A. Yes sir.
Q. Take the general bottom of the lake. State whether or not that is sandy.
A. Generally a sandy bottom; hard sand and gravelly.

Q. What about the shore line, as to whether or not the limits of the lake are well defined?

A. Well, they are well defined in some places; not quite as well in others.

Q. Now, Mr. Fisher, taking into consideration the lake during the whole time that you have known it, state whether or not it has always been about the same character as to depth and permanence?

A. Yes, as a general thing it has.

Q. Now take the lake and the indications that you have seen there you may state what was the condition of the lake along in the 30's when it was first surveyed by the Government?

A. I will have to answer that mostly by the Government field-notes——

Q. Not by the Government field-notes. Take your opinion, having seen it for thirty years, what was its condition then and situation?

A. I think about the same; in measuring from a permanent point established by nature with the field-notes so many chains and links it is nearly the same distance now as it was then.

Q. It is about the same now as it was then?

A. Yes.

472 MONDAY MORNING, *Dec.* 19, 189–.

FRANK N. ROSSITER was recalled by the plaintiff and testified as follows:

Examined by Mr. YOUCHE:

Q. You spoke about this shanty known as the Kean shanty, where is it located with reference to the center of the lake, that is, the center as to depth that you described the other day?

A. It is something over 2,000 feet east of the center,—east of the lowest point in the lake.

Q. East of the deepest point in the lake?

A. Yes sir.

Q. Where is it located with reference to the areal center?

A. The original Lake George?

Q. Yes, this Lake George, the area of it. Get a center line according to the area that runs north and south, now where is it located with reference to the center?

A. Well, I would say 1,500 or 1,600 feet; maybe not quite so much as that.

Q. Which way?

A. The shanty?

Q. Yes.

A. The shanty is east of the center of the lake.

Q. East of the areal center?

A. Yes sir.

Q. Where is this island you spoke about with reference to the center, with reference to the depth of the lake center, to the areal center——

A. The island is about 1,200 feet east of the center of the lake at the deep-water point.

Cross-examined by Mr. FENNELL:

Q. I want to ask a question, Mr. Rossiter, in reference to the shore line so we may understand. I will ask you this out of court. Do you contend that the shore line in 1834—'5 and '6 at the time of the survey was right where the field-notes of the survey makes it when the waters have receded or not; what is your position in regard to that?

A. Let me understand that question.

Q. Do you contend that the original margin of the lake, of this lake, or the shore line that you call it, was where the meander line was run?

A. I don't know whether the waters have receded since that time or not from actual knowledge. The notes show that the lake was at one time outside further still and even outside of the mean-
473 der line. At what particular stage of water that boundary of Lake George was established I cannot tell.

Q. Didn't you tell me Saturday that you had no doubt that the water line was right where the meander line placed it at that time as far as you knew?

A. No sir, I did not. You asked me if I contended so, thought that the meander line was not right and I told you I did not think so.

Q. Didn't you say that you had no doubt that it was?

A. No, I said I did not undertake to state that the meander line was incorrect. It would have made no difference if I did; the records of that meander line would show the situation in that respect.

Q. Have you talked with anybody on that question?

A. The one we are discussing?

Q. The question I asked you.

A. No sir.

474 *Testimony of Charles Kreuter,*

a witness for defendant, being sworn, testified as follows:

Examined by Mr. FENNELL:

Q. What is your name?
A. Charles Kreuter.
Q. How old are you?
A. Sixty.
Q. Where do you live?
A. In Whiting.
Q. Where is the house that you occupy?
A. That is lot 2 in section 18, in the Kean cottage.
Q. How long have you rented that cottage from Kean?
A. I rented it in 1880 in January.
Q. Did you have possession from that time to this?
A. Yes.

Q. You have possession?
A. Yes.
Q. Who lived in that cottage before you rented it?
A. The first house—when the house was that Mrs. Kean lived in it.
Q. How long did she live there before you?
A. She lived before me about five years.
Q. Do you know anything about the meander line and the water line?
A. I know about some; I never measured it.
Q. How long have you known that Lake George?
A. About since 1866.
Q. From your knowledge of it do you think that the water was ever further east than it is now?
A. Sometimes it was in some places.
Q. You may go and state the character of your possession there, what you did and what you used the lake for?
A. I used it for hunting and fishing, keeping boats, keeping myself—keeping the Hunter's Home, you know.
Mr. YOUCHE: I suppose that he sailed on the lake.
A. Row with a boat.
Mr. FENNELL: What was the lowest stage of water that you ever saw in Mud lake?
A. About two feet.
COURT: I suppose you mean Lake George by that?
A. Yes.
Q. What is the usual and ordinary name of the lake?
A. We always called it Mud lake since I know it. Everybody calls it Mud lake now.
475 Mr. YOUCHE: There is one question I want to ask you and then I am through.

FRANK N. ROSSITER was recalled by plaintiff and testified as follows:

Examined by Mr. YOUCHE:

Q. Mr. Rossiter, where is this Kean shanty with reference to center, what would be the center line of the section; the line that runs north and south, runs through the section, what would be the center line of the section?
A. The line would be 40 chains west of the east line of this fractional section, and the Kean cottage, I think, is 1,700 or 1,800 feet west of the east line, which would be some 700, 800, or 900 feet east of the center of section 18; maybe no more than 700 or 800 feet.

476 *Testimony of Charles Kreuter*

was recalled by defendant and testified as follows:

Mr. FENNELL: I want to ask Mr. Kreuter how much land that your lease covers?
Mr. YOUCHE: The lease will show for itself. We object, we object to showing what the lease covers, because the lease——

Mr. FENNELL: I will ask Mr. Kreuter how much land he had possession of.

Mr. YOUCHE: We object.

Mr. FENNELL: I want to know what you did as tenant of Mr. Keane? What did you do under the lease that you got from your landlord?

COURT: What did you do under the lease that you got from your landlord with reference to occupying the property?

A. I was living in the house, attending to my business. I looked over the ground and cut hay.

Mr. FENNELL: You testified just now——

COURT: What's the use going into this question? Is it denied that he attempted to hold possession under the lease?

Mr. YOUCHE: No.

Mr. FENNELL: That is all.

477 CALUMET CANAL AND IMPROVEMENT COMPANY *vs.* ALEXANDER ET AL. } No. 7917.

JULY 1, 1895.

Testimony of Samuel A. Kean,

being sworn as a witness in said cause testified as follows in behalf of defendant.

Examined by Mr. FENNELL:

Q. What is your name?
A. Samuel A. Kean.
Q. Where do you live?
A. In Evanston.
Q. What county and State?
A. Cook county, Illinois.
Q. Are you acquainted with Anna R. Kean?
A. I am.
Q. The defendant in this case?
A. I am.
Q. Are you related to her in any way?
A. She is my wife.
Q. Will you please state briefly the facts in regard to your taking possession of this land in controversy and at what time? Just what you did for Anna R. Kean.
A. You mean to go back to the beginning.
Q. To the beginning.
A. In 1874 a number of people took homesteads——

Mr. JOHNSTON: We object to what a number of people did.

COURT: Do you claim under the statute of limitations?

Mr. FENNELL: I think I do.

COURT: With that view I suggest that the court receive the evidence and take the objections under advisement. I have to pass on

this matter as it is presented. As to saying what the neighbors did I think it is immaterial.

Mr. JOHNSTON: Your honor, if they are going into that question we will have to ask for time,—but I may wait first and see what his evidence is.

COURT: Proceed.

Ans. I was going to say, these parties in 1874 homesteaded that property in question——

Q. By the "property in question" you mean the beds of the lakes?

A. Yes sir. Do you wish me to say anything about the Wolcott survey?

Q. Tell it in your own words?

A. After homesteading it they made *made* application for the Wolcott survey and it was granted in March, 1875. I furnished money to about all of the parties and houses were built for them on
478 certain parts of the property. They took possession in April, 1875.

Mr. JOHNSTON: That is not twenty years from the time of the commencement of this suit.

Q. What time did you say they took possession?

A. Most of them took possession in 1874 and in March, 1875; before I think I helped to take possession by finishing their buildings and in March moved into them and early in April.

Q. Did you build that building on the shore of Lake George, or cottage, commonly called the Kean cottage?

A. I furnished and bought the lumber and sent it down to the men that built it.

Q. Who lived in that cottage?

A. My mother.

Q. Did any other member of your family live there—about there?

A. Yes; south of that towards Hammond my sister lived there.

Q. Did your brother ever live there?

A. He lived on the other side.

Q. I did not mean in that house. I will ask you if you acquired the title of these homesteaders? Tell the court how that was.

Objected to by plaintiff.

Mr. FENNELL: I want to show, it the court please, that this land was originally homesteaders'; that Mr. Keane bought out these homesteaders and acquired their title, and afterward and in order to perfect his title he filed scrip upon the land, let the homesteaders be cancelled and got possession immediately, without having to wait for five years, but that he first purchased the homestead interest.

COURT: These are matters of record.

Mr. FENNELL: I want to show that he had originally taken possession under the homesteader law.

COURT: These things which are matters of record you ought not to testify to.

Mr. FENNELL: I want to show the facts in regard to possession.
COURT: No objection to that.

Q. When did these people take possession first of the land? Any of the homesteaders?
A. They all took possession first.
Q. When?
A. In the spring of 1874.
Q. Are you sure there was none of them there as early as 1873.

479 Objected to by plaintiff.

Q. Will ask you if you representing Anna R. Kean, if you had continual and uninterrupted possession from that time to the present time?

Objected to by plaintiff on the ground that it is a conclusion.
COURT: What constitutes possession is a question of law.

Q. Who else did you put there for her?
A. You broke me—shall I commence where I left off before?
Q. I want to hasten the evidence——
A. I am not clear but what some of them were there in 1873, I know with two exceptions, in the spring of 1874; some contests came up about that time. Arrangement was made whereby Sioux scrip*t* was allowed to be located on the property.

Objected to by plaintiff on the grounds that that is a matter of record. The court sustained the objection.

COURT: He is asking you now concerning the history of the property.
A. Arrangement was made whereby certain interests were purchased from these parties. Since that time the property has been constantly in possession of Mrs. Kean.

Mr. JOHNSTON: That is a conclusion.

Q. You say it has been constantly in possession. Mr. Keane, state how, in whose possession?
A. I stated, Mrs. Kean's.
Q. Who have occupied it? How have they occupied it?
A. It has been occupied by people living on it themselves or by lease.
Q. To who, was it leased?
A. Charles Kreuter.
Q. Do you know how long Kreuter has been there?
A. I could not tell you.
Q. Do you know if he is there now.
A. He is there now.
Q. Did Kreuter move into the cottage built formerly and occupied by yourself or your mother?
A. He did.
Q. Did your mother succeed immediately the homesteaders on that land?
A. She did.

Q. These leases have been matters of record have they not?

Q. Mr. JOHNSTON: Well, the record will show.

Q. I will ask, you, Mr. Kean, if Mr. Kreuter's living there
480 has been open and notorious, as your tenant?

Objected to by plaintiff and the court sustained the objection.
COURT: He can state what he done.

Q. I will ask you to state, as far as you know, what Mr. Kreuter has done there in the way of occupying that land?
A. He has had charge of the grass and fishing——

Objected to.

Ans. He has fished and cut grass and kept the house in repair and made some improvements.
Q. Have you ever been there yourself?
A. Yes.
Q. Did you ever sleep in that house?
A. Yes sir.

Cross-examined by Mr. JOHNSTON:

Q. Who was it went there as early as 1874?
A. I think John A. Smaal went there as early as 1873.
Q. Is he the first one?
A. I think he is.
Q. Now, no others until some time in 1874?
A. I think two gentlemen by the name of Felt.
Q. Are you holding under Smaal?

Mr. FENNELL: Let the abstract show the sources of his title.

Q. Do you claim that land that Smaal went on?
A. Mrs. Kean claims all land that any of them went on.
Q. Including that that Smaal had?
A. Including all.
Q. When did you acquire the Smaal property?
A. All of them were acquired at the time arrangements were made for the Sioux scrip.
Q. When did you acquire the Smaal property?
A. My recollection is it was some time in 1874.
Q. Was he there at that time?
A. He was there.
Q. He was ousted?
A. Not to my knowledge.
Q. When did Charles Kreuter go there?
A. I don't remember the date.
Q. Can you tell about when it was?
A. I would like to refer to——

Mr. FENNELL: Mr. Kreuter's evidence shows that he went there in 1880.

Q. He is only claiming four or five acres?

A. He has about 1,600.

481 A. On about 1,600 acres?

A. About 1,600.

Q. That is not fenced in?

A. Not all of it.

Q. There is not but a few acres fenced in?

A. I don't know about that.

Q. You are not familiar enough to say whether it is fenced and yet you are swearing to possession?

A. That was fenced I believe all of it.

Q. There has not been any fences on it for years?

A. There has been fences torn down by the opposition, forcibly torn down. The party you represent tore down the fences.

Q. They have been down for years?

A. I don't know how many years.

Q. They have been down for how long?

A. You are not doing it.

Q. Don't get smart. Answer my question.

Mr. FENNELL: We object. Remarks of that kind are not proper.

Q. The opposition you say, the Calumet Canal and Improvement Company have been tearing down the fences for years?

A. I did not name the Calumet Canal and Improvement Company.

Q. Answer my question, sir.

A. The party who sold to the Calumet Canal and Improvement Company.

Q. The Calumet Canal and Improvement Company since it has had it kept the fences down.

A. I could not say—answer that.

Q. You know they are down?

A. I could not say how many are down.

Q. Don't you know there are no fences except a small fence where Kreuter lives?

A. I could not say.

Q. Do you know to the contrary?

A. I could not say.

Q. Before the selling Forsyth tore them down?

A. He had something to do with it.

Q. He claimed to have owned that or his wife?

A. He tore them down——

Q. I asked you if he did not claim to own it or his wife?

A. I believe they did.

COURT: How often were you there, Mr. Kean, from 1874 on for several years?

A. For several years I was down there several times a year; latterly I have not been there more than once or twice for some time.

COURT: When did this trouble first commence over this question of occupancy?

A. I think it commenced back as far as 1875 probably.

482 Mr. JOHNSTON: All the time then?

A. It has been in times.

COURT: What would the parties do?

A. Fences were built—these homesteaders built fences; many of them were torn down, by Mr. Forsyth and his friends. They could not stand there, take shotguns on the ground. Then a highway was fenced up by Mr. Forsyth. That fence they tore down.

COURT: With reference to the land in the immediate vicinity of Mr. Kreuter's house what was done in reference to that, if anything?

A. I don't remember any fences that were torn down there.

Mr. JOHNSTON: As a matter of fact these were not built until 1880, until Mr. Kreuter went there. Do you remember when that was?

A. They were built around a garden spot there right away.

Mr. JOHNSTON: When did they build around the garden spot?

A. Probably the latter part of 1874 or the fore part of 1875.

COURT: Is that house where Mr. Kreuter lived, is that the house where your mother lived?

A. Yes.

COURT: When was that first fenced?

A. I think about the time the house was built; they put a little fence around it in March.

COURT: March when?

A. 1875.

Mr. JOHNSTON: Do you claim, Mr. Kean, that your wife was in possession of this land, or that Smaal was in possession at the time of conveying to your wife?

A. If I could look at the record——

COURT: Was Smaal in possession *that* at the time of conveying to your wife?

A. I could not answer that question.

COURT: Was the building there at the time he conveyed to your wife?

A. I don't think you will find any record direct from these parties to my wife.

Mr. JOHNSTON: There is no record, you mean to say?

A. I think your abstract will show.

Mr. JOHNSTON: You say you think there is no record?

A. I refer you to the abstracts.

Q. Is that your opinion that there is not any record?

COURT: He says he don't know.

Mr. FENNELL: Is it not a fact that your wife has acquired title to this property by mesne conveyances?"

Mr. JOHNSTON: He said "direct to my wife."

483 Mr. FENNELL: Judge Johnston, Mr. Kean, said "direct to my wife." You want to convey the impression that he said "direct from Smaal to my wife."

COURT: Then I will ask the reporter to read.

Mr. FENNELL: He is giving the impression what Mr. Kean did not say——

Mr. JOHNSTON: I have a right to make such remarks when you make such a statement.

Mr. FENNELL: I don't think you have a right to put words into his mouth that he did not use.

COURT: There is nothing before the court, gentlemen.

Mr. FENNELL (and continuing): I will ask you the question, what you meant by being no record of the conveyance from Smaal to your wife?

A. Henry O. McDaid was alive at that time and conducted the negotiations——

Q. Who was Henry O. McDaid?

A. He was an attorney-at-law at that time.

Q. A partner of Leonard Swett's was he not?

A. No; he was not. Leonard Swett's partner was John P. Wilson at that time.

Q. What did McDeid do?

A. He had charge of the arrangement of the homesteaders for the Sioux scrip and conducted those negotiations.

By COURT as follows:

Q. When did you first see this property?

A. My recollection is the winter of 1873—to the best of my recollection.

Q. This house that was built for your mother was put up when?

A. In March, 1875.

Q. There was no one living there prior to that time?

A. The other homesteaders I was speaking about lived there prior to that time.

Mr. JOHNSTON: Who are those other ones?

A. I could not exactly name all. I think a gentleman by the name of Robison and another one by the name of Waters and half a dozen others.

COURT (and continuing): Where did they live?

A. They were there. The homesteaders took possession of all the bed of the lake.

Q. Where?

A. On shore of the lake.

484 Q. In one house?

A. No, they built houses around.

Q. Where were they?

A. Clear around the lake, different places. They done it in reference to covering the lake—the bed of the lake.

Q. When did they move out in reference to the time that your mother moved into the house?

A. This particular house was built especially for her. They did not move out.

Q. What became of this house?

A. I can't tell you from my knowledge except my mother's house was still standing there years after. I understand that different arrangements were made, people moved to different parts of the country; some of them sold out and the houses were torn down.

Q. How frequently did I understand you to say you were out to this property?

A. I should say just from my memory for five or six years I was down there not less than four times a year—for several years; after that I was there less frequently; I have not been on the ground for more than a year now.

Mr. FENNELL: You had a tenant there, however?

A. Yes.

Mr. JOHNSTON: Does Kreuter pay you any rent?

A. Yes.

Mr. JOHNSTON (continuing): What does he pay you?

A. Consideration for doing certain work.

Q. What was the work he was doing?

A. In the first place there is considerable work to go around the lake and keep watch of the trespassers. It is some work to watch trespassers.

Q. He goes around the lake keeping the other police off?

A. He is keeping them off so far as I know.

Q. You know they have torn the fences down right along don't you?

A. Yes sir, there have been fences torn down.

By Mr. FENNELL (and continuing): How did McDeid acquire the rights of these homesteaders?

Objected to by plaintiff.

COURT: What is the purpose of this?

Mr. FENNELL: I want to show the contract between McDeid and the homesteaders; that he bought them out.

Objected to by plaintiff.

485 Q. Is there such a contract in writing?

A. I don't know as to that. There may be. There is a contract——there was a contract—whether it is written or not I don't know.

Mr. FENNELL: I want to show within the beds of these lakes, the beds of the two lakes were leased by Charles Kreuter.

Q. Were all lands within the beds of these two lakes contained in the lease to Charles Kreuter?

Mr. JOHNSTON: If there is a lease it will show for itself.

Q. I will ask you if Charley Kreuter is living on the land described in the lease?

A. Yes sir.

Mr. JOHNSTON: There is no lease proven.

Mr. FENNELL: Is not the abstract enough?

Mr. JOHNSTON: Does the abstract show a lease?

Mr. FENNELL: It shows more than one. That abstract is not brought down to date.

Mr. JOHNSTON: There is no copy of the lease there.

Mr. FENNELL: I will ask you if it was a written lease?

A. They were all.

Q. Is it recorded?

A. It was recorded several times. Whether the last year is recorded or not I don't know.

Mr. FENNELL: I ask the court to consider it in evidence. I don't know what the abstract shows.

COURT: If you want to make a showing for a continuance—that is another matter. I will give you an opportunity to do that.

Court took its noon recess, and when again convened, the following evidence was heard from Mr. Kean.

Testimony of S. A. Kean,

recalled in his own behalf and examined by Mr. Fennell as follows:

486 Q. Mr. Kean, I want to ask you, if McDeid, if Henry O. McDeid had charge of these matters as attorney from the time that these homesteaders originally settled on this land until the patents were issued under the Sioux scrip location?

Objected to by plaintiff.

Mr. FENNELL: I want to show that it was one continuous transaction by one man.

COURT: You can show that he had charge of certain matters between certain times.

Q. Probably the question would be to ask Mr. Kean what McDeid did from the time the homestead was located upon the land, took possession of it until the scrip was located and the patents were issued.

COURT: Do you know of any proof that the scrip was located?

Mr. FENNELL: By the abstract.

COURT: Fix the dates then.

Q. Between 1874 when the Wolcott survey was made and March first, 1887, state what McDeid did during those times?

Ans. McDeid was attorney in the case from the time the homesteaders first settled on the land until the patents were issued, and represented them for many years after that, for that matter.

Cross-examined by Mr. JOHNSTON:

Q. How do you know that?

A. From personal knowledge.

Q. Well, tell us what your personal knowledge is?

A. Ask me a little closer question.

Q. That is as close as I want to ask it now. Tell us what your personal knowledge is?

A. I know that he was attorney as well as I know that Mr. Fennell was attorney the same way.

Q. Never mind that. Answer the question.

A. I simply know that he was.

Q. Well, how?

A. I know that he was attorney for my friends.

Q. How do you know?
A. From McDeid's doing the work, and my friends telling me so,—from talking with them on the subject.

Mr. FENNELL: Who furnished the money?

Mr. JOHNSTON: Never mind that. Just keep quiet. That is
487 all you know about it.

A. I furnished some of the money to pay. I know that.
Q. Have you told us all you know? If you can tell us how you know it.
A. I could tell a good deal more.
Q. Well, tell us more then.
A. I have seen the contracts between the parties—seen the bills paid by them.
Q. Have you got any of them?
A. Not as I know of.
Q. Have you told us all you know about it?
A. I could tell a good deal more if I had a little time to think.
Q. That is all you can tell us now?
A. I don't say so.
Q. Say so one way or the other?
A. I know he was the attorney employed by all the homesteaders and that he had the matter in hand.
Q. Can you tell us anything more about it? I want to know what you know about it.
A. Give me some definite question and I can answer it.
Q. Do you claim that you do not understand the question the question I asked you? Tell what you know about his being attorney for them.
A. I know he was attorney.
Q. I asked you how you know it?
A. I know it by his being employed; I attended to the work for my mother and a sister of mine I had business connection with Mr. Smaal and I know he was employed by him and others.
Q. You had business connection with Mr. Smaal? Do you know what Mr. Smaal was doing?
A. Yes, sir.
Q. Now, what was he doing all the time?
A. I know that he was like them on the homestead.
Q. That is what you are contending for?
A. Not this one; our title comes down from him and the others.
Q. He was about the earliest one to settle there?
A. Amongst the earliest.

488 *Testimony of Mrs. Sarah A. Smale,*

a witness produced by the defendant, Kean, being duly sworn, testified as follows:

Examined by Mr. FENNELL:

Q. What is your name?
A. Sarah A. Smale.

Q. Where do you reside?
A. 124 Dekalb street, Chicago.
Q. Are you the wife of John A. Smale?
A. I am the widow of John A. Smale.
Q. When did John A. Smale die?
A. September 19, 1879.
Q. Mrs. Smale, will you please tell the court if you ever lived in the northern part of Lake county, Indiana?
A. I have.
Q. And if so, when and where and under what circumstances.
A. We moved there to the northern part of Lake county in 1874 and lived there until before my husband's death. I went to Beloit, Wisconsin, on account of death in the family.
Q. Where did you live?
A. I lived on the property known as Wolf Lake property—United States property, as we termed it,—we held it to be.——
Q. Will you describe the condition of the land at the time that you lived there? If she identifies those views, your honor, I shall offer them in evidence. Look at those views and state whether they correctly represent portions of Wolf lake that they purport to represent?
A. Yes; they do.
Q. We desire to offer those views—photographic views—in evidence. When were those views taken?
A. They were taken in 1875—either the fall of 1874 or in 1875.
Q. Will you tell the circumstances connected with them, the residents on those lands, tell the court the facts in your own words?
A. Tell the whole story?
Q. Yes, the reason of your going down there was because——

Objected to.

Ans. Well we went to Wolf lake believing it to be Government land.
Q. For what purpose did you go?
A. We went for a home.
Q. Did you take any legal steps towards acquiring a homestead there?

489 Objected to by plaintiff.

Q. What did you do?
A. We homesteaded the property. We took the property as a homestead, moved there in 1874.
Q. Who took the property as a homestead?
A. My husband and I and other parties later went down there.
Q. How many other parties? Who were they?
A. I have the names on an envelope that I might not forget.
Q. You may refresh your recollection from that.
A. John A. Smale, O. B. Felt, H. H. Felt, Sweno Kean, Jonathan Wilkins, Joseph M. Kean, William Killker, Robinson, William Wheeler, Charles Rose.

Q. State when those parties went there? What is the nature of the improvements they made in the way of cultivating?

A. These parties followed us in 1874; some of them moved along in the early spring of 1875 or winter of 1875. I find that by looking at papers I have in my possession since we went there. Some parties come down in February, 1875, and I see here——

Objected to.

A. Well I will say——

Q. Well, drop those ideas.

A. And each took up a home there and built a house and lived in it and made a garden.

Q. What was the character of the land that you cultivated?

A. The land was dry, sometimes too dry for a good garden near my house.

Q. Were there any trees there?

A. There were a good many trees,—trees by actual count of the rings, 200 years old.

Q. How large?

A. A good-size tree.

Q. Pick out the picture that shows your house that you talk about.

A. A part of this is Mr. Kean's; we changed when we first went down there in our homestead. A photograph of my house has been lost, having been placed in a vault for safe keeping and in some way was lost.

Q. Please look at the map now shown you. There is no picture here then relating to yours?

A. Not to my home.

Q. How much land did you cultivate?

A. Well, I don't know about the acres,—how many acres
490 there would be; there would be a number of acres cultivated.

Q. How many acres were there with trees around your house?

—. As to that I could not say in acres, but I would say there was a strip of land, a body of high, dry land that was cultivated I think for three-quarters of a mile,—I mean that we cultivated. There was much we did not cultivate. We were grubbing and plowing it.

Q. Was there at that time any part of the bed of either of those lakes south of what is called Wolf river or the neck of the lake that you could not walk over?

A. Do you mean was water so we could not walk through it?

Q. That is what I mean.

A. The men walked through there; the women did not usually.

Q. I will ask you to look at the picture now shown you and indicate on the map where that meadow was?

A. This is O. B. Felt's meadow looking south from there. (Indicating.)

Q. What lot?

A. Lot 5 is it not? Lot 5 or lot 1. He was on Wolf lake instead of Lake George.

Q. Take that map and tell us where it stood?

A. I would think there; yet as to that I cannot say.

Mr. FENNELL: The witness indicates a point about in the northwest quarter of the northeast quarter of section 13.

Q. Does that picture represent correctly what counsel terms the bed of the lake at that point?

A. Yes, this picture represents O. B. Felt's land. His house is on the other picture.

View 18 (excepting the writing upon the view) was now received in evidence and is as follows:

(Here follows photograph marked page 491.)

492 Q. Look at the view now shown you, No. 3, and tell us where the land is?

A. This land is somewhere here at the north; it would be probably about here; that is Gallagher's house,—that is showing the meadow and the timber land between Gallagher's house.

(The witness indicates a point in lot 5 of section 3 as Gallagher's house and at a point in the east 80 acres of the southwest quarter of section 18 as witness's house upon this view No. 3,—looking from one to the other.)

Mr. FENNELL: We offer this view No. 3 in evidence.

The view or photograph No. 3, was then admitted in evidence and is as follows:

(Here follows photograph marked page 493.)

494 Q. Look at the view now shown you and indicate on the map where that land was?

A. This view shows the land between Kean's house and Gallagher's. Kean's house was between Gallagher's and our house at that point.

(Witness indicates a point on the map, lot 6 of section 18, range 9.)

Mr. FENNELL: We offer this view No. 4 in evidence.

The view No. 4, as identified by the witness was admitted in evidence, and is as follows, to wit:

(Here follows photograph marked page 495.)

496 Q. Look at view 15 and tell us what that represents?

A. It is the gravel beach at the north end of the lake—at the north end of Wolf lake, between Wolf lake and Lake Michigan in township 38.

Mr. FENNELL: We offer this view in evidence.

And thereupon view No. 15 was received in evidence and it is as follows:

Mr. FENNELL: This in rebuttal of Mr. Rossiter's deposition as to the character of the land.

(Here follows diagram marked page 497.)

No. 47
Keau
v
Cau & Co
p. 491

Showing Chas. Kaui's house & land N. side
Sec 7. T 37 R. 7.

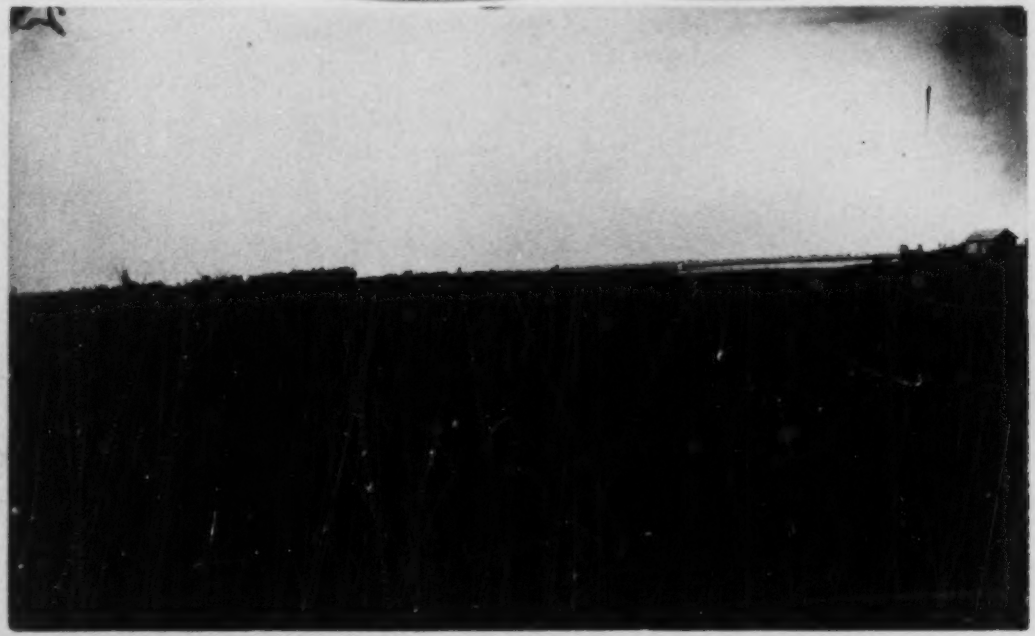
No 47
Keane
Canal Co.
1897

Showing Meadows & Timber Lines bet- W. C. Gallagher
House & Old Stable. Position 2 Rods East of Mr G's House
& showing Fence & Hill & Timber - Dec 18-97-9

Showing Meadows between Rain's & Tallacher's
Sec 18 - T. 37 - Range 9 - [illegible]

No 47
Kean & Canale
p 497

Sand & Gravel Beach at the North End of Wolf Lake between Wolf Lake & Lake Michigan. Town - 38 - Range 10 - Sec 1 —

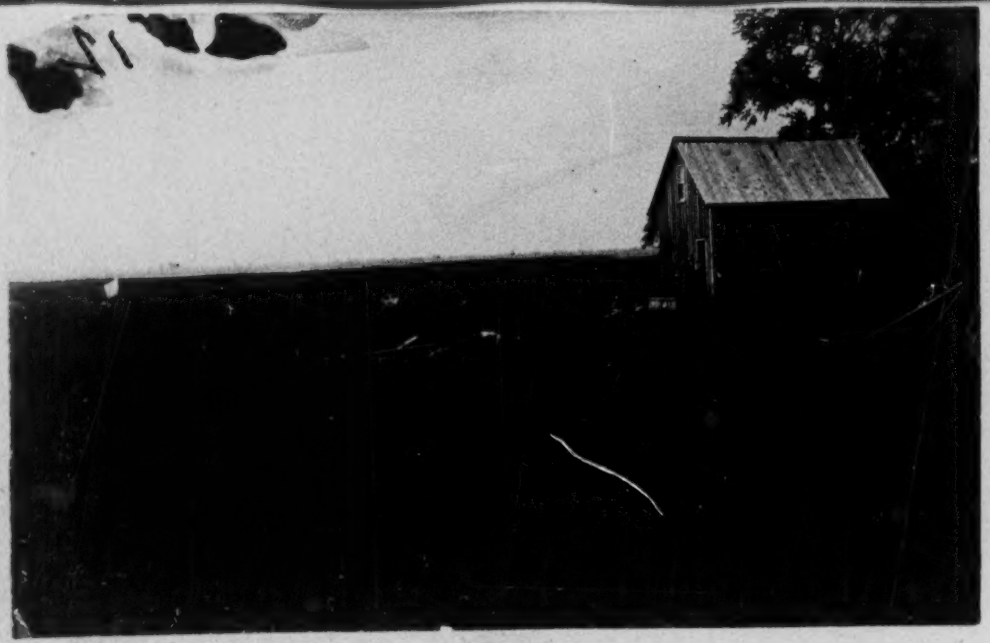


Showing Chas Rasi Dance from C. H.

showing O.B Felt meadows - Looking due South.
Secs. 12 & 13 - Town 37 - R 10 -

Showing North side of O.B Falls
Sec 12 & 13 of 37 - R. 11.

North Platte Project
Garden Co.



Showing O. P. Fell- House & meadows with family

498 Q. No. 1—what section is that?
A. Section 7.

Mr. FENNELL: We offer that in evidence for rebuttal of Mr. Rossiter's testimony as to the general character of the land.

Q. What view is this?
A. No. 2.

Mr. FENNELL: We offer that in evidence for the same purpose.
And thereupon views Nos. 1 and 2 were admitted in evidence and they are respectively in the words and figures as follows:

(Here follow photographs marked pages 499 and 500.)

501 Q. Look at picture 14 and tell me what that represents?
A. That represents the north side of O. B. Felt's land, section 12.
Q. Where is that on the map?
A. It would be north of O. B. Felt's house in Wolf lake.

Mr. FENNELL: We offer that picture in evidence.
And thereupon view No. 14 was received in evidence and it is as follows:

(Here follows photograph marked page 502.)

503 Q. Look at picture No. 12 and tell me what that represents?
A. O. B. Felt's house and meadow, view looking south of section 12.
Q. Where is that situated?
A. Section 12, 13, 24 in township 37.

Mr. JOHNSTON: You read it from that. Tell it so I can object.

Ans. I mean to say the house is not here.
Q. Please look at the map and tell me again where O. B. Felt's house stood.
A. It was between this strip of land, this land we held as Government land and this strip of land here.
Q. Is that a picture of his house?
A. That is a picture of his house and his family.

Mr. FENNELL: We offer this view in evidence.
And thereupon view No. 12 was admitted in evidence and is as follows:

(Here follows photograph marked page 504.)

505 Q. Look at view No. 5 and tell me what that represents?
A. That is the north end of what we call the island. Mrs. Kean's is looking west of section 18.
Q. Tell me about where that was on the map.

(Witness indicates a point in the northeast quarter of the northwest quarter of section 19.)

Mr. FENNELL: We offer this picture No. 5, in evidence.

And thereupon view No. 5 was admitted in evidence and it is as follows:

(Here follows photograph marked page 506.)

507 Q. Now, Mrs. Smale, have you indicated the position of those houses to the best of your recollection?

A. To the best of my ability I have.

Q. You have simply pointed out the position on the map?

A. So nearly as I could—as perfectly as I could.

Q. What does No. 5 represent?

A. The end of Elm island and Mrs. Kean's stacks looking due west.

Q. What is that mound in that picture?

A. That is a haystack.

Q. Hay cut on the bed of this lake?

Objected to by plaintiff and the court sustained the objection.

Q. Where was the hay cut?

A. It was cut on the island. We called it Government land.

Q. State whether or not it was in what is called the bed of Wolf lake or George lake?

Mr. JOHNSTON: Describe what it is. It may be a question what is the bed of Wolf lake or George lake.

Q. State whether it was within or without the lake line?

A. It was within. That hay was cut here. This is not water because you call it lake; it is high and dry land with large trees. As we come down here it is dry land as I would indicate it along this side. I think this is what is called George lake and Mud lake. Here is an island and trees upwards of a hundred years old.

Q. How deep is the water?

A. Of course I have lived on that land a good many years; it has been the bed of the lake years ago,—how many years I don't know, but a great many more years than I am old. From talking with those who have sounded the lake at many points I am led to believe——

Objected to.

Ans. It would be an average depth I would say of 15 inches at that time. I am talking of our lake—Mud lake.

Q. At what time?

A. In 1874.

Q. At the time those affidavits were made for a survey?

A. Yes, sir.

508 Q. Were all of those houses that you testified about within the bed of the so-called lake?

Objected to by plaintiff.

COURT: You have seen the plat of what purports to be Mud lake?

A. Yes sir.

Showing the Rock on Glen Island 4 miles from
with Yacht Rotary [illegible]

COURT: Were all of those houses within what purports to be Mud lake?

A. They were within what purports to be the bed of the two lakes; not all George lake because some are in Wolf lake.

Q. Which ones in Wolf lake?

A. O. B. Felt.

COURT: One?

A. One.

Q. What do these black dots on the maps represent? What objects, if any, were at those points?

A. I would say they were houses, all those who located out there, homesteaders.

Q. Now tell us what trouble, if any, you had there to retain possession, if you had any trouble with anybody?

A. Only Mr. Forsyth caused the arrest of my husband for trespass. He, I believe, was fined 25 dollars and cost.

Q. What did Mr. Forsyth do in regard to your house?

A. He tore it down and moved it away.

Q. What did you do?

A. Built it again better than ever. We built again better than ever.

Q. What did you do to Mr. Forsyth?

Objected to by counsel for plaintiff.

Mr. FENNELL: Mr. Forsyth testifies in a deposition that he went there and ejected by arms. I want to prove by this witness that he was arrested and fined $25. for doing it. I want to show the possession such as it was.

COURT: In order to hold title by prescription a person must hold it twenty years. The possession must not be interrupted for even a single moment.

Mr. FENNELL: Tearing down a man's house is not an interruption.

Q. Now please tell the jury, Mrs. Smale, what was the final outcome of this attempt by these various parties to obtain a homestead on this land?

Objected to by counsel for plaintiff.

509 Mr. FENNELL: I want to show the connection between the Sioux half-breed scrip title——

Q. Did you make any declaratory statement?

Objected to by counsel for plaintiff on the ground that the record is the best evidence of that fact.

Mr. FENNELL: I want to show that she attempted to put a declaration on file and they rejected it.

Q. Did you send a paper to Indianapolis with a view to homesteading this land?

Objected to.

Q. Did you send a paper to Indianapolis?——

A. We sent a paper to Washington and it was returned.

Q. Tell what was done, what you were going to do about it,—what you know about it?

A. The paper was a declaratory statement.

Objected to by plaintiff.

Q. What became of that paper?

A. The paper is right there in that envelope.

Q. How many papers are there? Are these the papers you had before you?

A. I don't know how many there are here or whether they are declaratory statements. I can show them one by one. These are the declaratory statements. This is our declaratory statement.

Q. Tell what became of it?

A. It went to Washington and the land not having been——

Objected to by plaintiff.

Q. Well, it went to Washington?

A. Yes.

Q. Then what became of it?

A. It was sent back.

Q. Why?

Objected to by counsel for plaintiff.

COURT: Was there some written communication with it?

A. There was.

Q. Look at the paper now shown you and tell me what it is?

A. Copy of a letter on file in this office.

Q. Where did you get that paper from?

A. We have taken care of it for twenty years.

Q. Where did you get it from?

A. From the auditor of State of the State of Indiana, E. Henderson.

510 Q. I asked you to tell me the final outcome of these attempts to hold homesteads? Tell what was done?

A. We wished to hold this land by homesteading and other parties who wanted to hold this land with half-breed scrip——

Objected to.

Q. They held by Sioux scrip.

Objected to by plaintiff and asked to be stricken out.

Q. Did these homesteaders ever withdraw their application?

A. We did.

Mr. JOHNSTON: How can she know what the others did.

Q. Do you know?

A. I do know; two were my brothers. We were naturally very closely associated in this work.

Q. Were the other applications withdrawn or not?

A. They were withdrawn.

Q. Did you enter into any agreement with any person with reference to the title to this land?
A. Yes, sir; we did.
Q. Is that agreement in writing?
A. Yes, sir.
Q. With whom?
A. With the attorney of the Sioux scrip.
Q. What is his name?
A. John S. Newman.
Q. From whom did you get your title to this land?

Objected to.

Q. Did you ever receive a deed to this land?

Objected to. The instrument would show. It might be one or another that she calls a deed.

COURT: Did you ever see what purported to be a deed, what you understood to be a deed?
A. I did.
Q. From whom did you receive it?
A. I have a writing written years ago. So I may not be mistaken may I read it?
Q. Certainly. You have a right to use a memorandum to refresh y ur recollection.
A. This is an agreement with H. O. McDeid.
Q. Who was H. O. McDeid?
A. He was attorney for all the homesteaders.
Q. Was there any agreement between the homesteaders and H. O. McDeid by which they were to prove their application and
511 take deed from McDeid for their respective land claimed?
. Objected to by plaintiff.

COURT: I have followed her evidence. This testimony of the witness shows that the possession was interrupted.

Mr. FENNELL: I want to show that Henry O. McDeid as attorney and agent of all parties compromised the different claims and deeded to Sarah Smale the land which she now claims. I claim an independent title in Sarah Smale. We expect to show that S. A. Kean furnished all the money. I will connect that and show that Henry O. McDeid was agent of both parties.

Q. Tell what you know about the settlement with McDeid? What was done——
A. I can best show that by a letter mailed at Washington.
Q. Tell what you know about it.
A. We were as homesteaders and found that it would be best to stop litigation. We accepted deeds from those who covered the land with Sioux scrip.
Q. Who furnished the money to build those houses you have testified about?
A. H. O. McDeid and S. A. Kean.
Q. When did you leave the possession of this land?

Objected to.

Q. How long did you live there?

A. We moved there on the 28 of February, 1874; we staid there, had my home there until after the house was torn down. It was torn down in 1881.

Q. Was any one left in possession of the land?

Objected to.

Q. If so, whom?

Objected to.

Q. Was there any one upon the land?

A. Yes, there was.

Q. Who was there?

A. Mr. Charley Kreuter and William Gallagher.

Q. Did you claim any interest in the land?

Objected to.

Q. Do you know what the circumstances were under which he moved there, staid there on the land?

A. As agent to care for the land. They were merely put there to take care of it.

Q. Do you know if he has been there from that time to the present time?

A. To the best of my knowledge he has; and Mr. Gallagher.

512 Cross-examined by Mr. JOHNSTON:

Q. What time did you say your husband died?

A. September 19, 1879.

Q. Mr. Forsyth ejected you there, too, didn't he?

A. I have my——

Q. Tore down your house?

A. Not the house; the temporary house was torn down.

Q. You didn't stay there long after the other house was built?

A. Yes, I did, your honor.

Q. Talk to the judge when you say "your honor." How long did you say you stay- there after he tore down your house?

A. If you will allow me to read this——

Q. Answer the question.

A. I was not there when the house was torn down.

Q. When was that house torn down?

A. The first of our settling upon the land was the 28 of February, 1874.

Q. He tore it down when?

A. Soon after we located on the land.

Q. Your husband was on the land at that time?

A. He was in the morning. I was there during the day; we staid there at night.

Q. He staid during the daytime?

A. No; we both lived there.

Q. Mr. Forsyth came down there and tore down your fences?

A. I was not there when there was any of this disturbance.
Q. He did not?
A. No.
Q. He ousted you from there?
A. Never.
Q. Did he sue you in the United States circuit court?
A. Yes.
Q. You knew that Forsyth objected to you holding any of this land and he objected right along?
A. I don't know that he objected right along.
Q. You knew that he commenced suit against you?
A. Yes.
Q. That was somewhere about 1878 or '7?
A. No.
Q. When was it?
A. I think it was earlier.
Q. What time would you say it was commenced?
A. I think the suit was begun in 1875?
Q. What time in 1875?
A. I can tell.
Q. Well, tell us when it was commenced?
A. The decree was June 6, 1879. The suit was begun
513 July 25, 1874—1874, according to the best of my judgment.
Q. The suit in Lake county,—speaking now of a suit in the United States court?
A. December 17.
Q. What year?
A. It is not given. I would think that was in 1875.
Q. The fences he had torn down frequently?
A. No sir.
Q. When did you move away from there?
A. I don't know that I could say I have ever moved away.
Q. Didn't you move away from there shortly after the decree in the Federal court was rendered?
A. No.
Q. Did your husband move before?
A. No.
Q. You had gone away before?
A. I didn't leave; my household goods were in the house; I hadn't left.
Q. How long did you leave them there?
A. They were until they were forcibly removed to William Gallagher's.
Q. Who forcibly removed them?
A. I was not there. I understood one Forsyth.
Q. That is Jacob Forsyth?
A. I understood they were taken away.
Q. Do you know when that was?
A. In the spring of 1880. I think it was after my husband's death.
Q. You speak about Kreuter. He did not live on this land?

A. He lived on the north half of the section. He took care of our house and William Gallagher.

Q. Where did William Gallagher live?

A. William Gallagher lived at the north end of George lake.

Q. Do you say that house of yours is standing there yet?

A. I said it was moved away to Gallagher bay. It was moved on the lake island.

Q. Who moved it?

A. That is I went out to see it and it was gone.

Q. How far was it moved away from where you had it?

A. It was on the same lot or island.

Q. How far was it moved away from where it was when you saw it?

A. They lived over a mile and a half from our house to Mr. Gallagher.

Q. Then it was up off the section 18? You say it was the
514 north end of Lake George?

A. Our house was moved to the north end of the lake.

Q. When was that done, as near as you can recollect?

A. If you will hand me the letter I can tell just when.

Q. State approximately?

A. 1880 or '81.

Q. There has been nobody living on that land since then?

A. There has been in the person of Mr.——

Q. Was not living on the north end of the section?

A. He was living in the house known as Mr. Kean's house.

Q. That is the north end of section 18?

A. I knew that he lived on that land. I know that he lived in the house called the Kean house.

Q. You spoke about being able to wade across these lakes? Is that a fact?

A. The men I said waded across. The women did not.

Q. The lake is two or three feet deep?

A. In some places.

Q. Take it where you lived and passed into the lake; before you reached the other side it was about seven feet deep?

A. I don't know the depth sir. I have seen my brother wade across. I never measured the depth.

Q. You ladies did not try to wade across?

A. No.

Q. What season of the year was it?

A. We lived there the year around.

Q. They did not wade in the winter time?

A. I saw one that waded in the winter time; he was walking right along and broke through.

Q. You say Gallagher is living there yet?

A. He is not now.

Q. How long has he been gone?

A. I don't know just when he left it.

Q. The north end?

A. Yes, sir.

Q. Mr. Kreuter you say took care of your land?
A. I hope.
Q. What did he do?
A. We had——
Q. Tell us what he did.
A. He cared for it, looked after it.
Q. What did he do? What were the acts that he did?
A. I think he would cut the hay. I had a very good garden. I had grapes and I had fruit trees to care for them.
515 Q. Don't you know for a good many years there has not been a single garden?
A. Yes; I went out there last summer. Mr. Kreuter did what services I asked of him.
Q. What were they?
A. To care for my property; to see that no trespassers took possession of it.
Q. You did not see a vestige of a fence there? They laid there to the commons when you visited there last summer?
A. When I visited there last year?
Q. Can you answer the question whether it laid to the commons.
A. I don't know.
Q. There was no fence around it?
A. I didn't think it was necessary.
Q. There was a commons; that whole country laid open?
A. I think Mr. Kreuter protected them.
Q. Was there a fence on the south end of section 18?
A. As to that I cannot say. I don't know whether the garden fence was torn down.
Mr. FENNELL: Where were you when the decree was entered at Indianapolis in the case of Forsyth against John A. Smale?
A. I was at Indianapolis.
Mr. FENNELL: Was John A. Smale living then?
A. John A. Smale was dead.
Mr. JOHNSTON: She says John A. Smale died in September, 1879.
A. Yes.
Mr. FENNELL: I asked you if you were at Indianapolis when the case of Forsyth against Smale was decided by Judge Gresham,—Forsyth *vs.* Smale in June, 1879?
A. No.
Q. When were you in Indianapolis?
A. November, 1881 I was in Indianapolis.
Q. For what purpose?
A. To attend court.
Q. For what purpose?

Objected to by plaintiff on the ground that it is immaterial.

Q. What if anything, was done after the decree was entered in that case?
A. After judgment was rendered there was an order entered vacating the judgment and granting a new trial.

Objected to by plaintiff.

516 Q. Did John A. Smale leave any minor heirs?
A. He did.
Q. What are their names?
A. John B. Smale.
Q. How old is he now?
A. 29.
Q. Any others?
A. One is a minor, Jesse A. Smale.
Q. How old is he?
A. 20 years.
Q. Where does he reside?
A. He is at school in Beloit, Wisconsin.
Q. Where was he born?
A. He was born on this land.
Q. More than twenty years ago?

Objected to by plaintiff.

Q. When was he born?
A. September 18, 1875.
Q. Are those all the heirs?
A. Four children.
Q. How many of them are minors?
A. One.

517–537 *Offer of Patents.*

Mr. FENNELL: I offer in evidence the original patents, with the endorsements thereon, from the United States to the various grantors of Anna S. Kean.

To the introduction of which plaintiff, by counsel objected, but the court overruled the objection and allowed the patents to be read in evidence.

And the said patents were then read in evidence, with the endorsements thereon, and are respectively in the words and figures following:

* * * * * * *

538 & 539 COURT: Is there any objection made to the evidence introduced concerning the field-notes?

Mr. JOHNSTON: No; that was waived.

Mr. MCMAHAN: No objection to the certificate. The objection is as to the legality of them on the ground that sections 12 and 13 was unsurveyed land. No objection made to the form of the certificate.

And all parties in this cause now rest.

And this was all the evidence in this cause.

* * * * * * *

540 And this was all the evidence given in this cause.

And the defendants, in said cause now present this their bill of exceptions and pray that the same may be examined, approved, signed, sealed and made a part of the record herein, but the court

not having time now to carefully examine the same, takes it under consideration for examination and approval this 25th day of February, 1896.

And after having examined the above bill of exceptions and finding the same to be correct it is now approved, signed sealed and made a part of the record herein, this 7 day of October, 1896.

JOHN H. GILLETT, *Judge.*

Filed Oct. 7th, 1896.

E. L. WILSON,
Clerk P. C. C.

541 STATE OF INDIANA, }
Porter County. }

I, Ed. L. Wilson, clerk of the Porter circuit court in said State do hereby certify that the above and foregoing transcript contains true and complete copies of all papers and entries in said cause.

And I further certify that on the 22d day of February, 1896, the sworn reporter who took down the evidence in said cause filed in my office his longhand manuscript thereof, which is the same manuscript of the evidence incorporated in the bill of exceptions, made a part of the foregoing transcript.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, at the city of Valparaiso, this 12th day of October, 1896.

[SEAL.]

E. L. WILSON,
Clerk of the Porter Circuit Court.

542 STATE OF INDIANA, }
Porter County. }

In the Porter Circuit Court.

THE CALUMET CANAL AND IMPROVEMENT COMPANY }
vs. }
CHARLES B. ALEXANDER ET AL. }

The clerk will prepare and certify a full and complete transcript of all the proceedings and papers on file and judgment in the above-entitled cause, to be used on appeal to the supreme court. In preparing said transcript the clerk will certify the original longhand manuscript of the evidence taken in said cause and filed in your office on the 22d day of February, 1896 and incorporated in the bill of exceptions filed in this cause.

WILLIS C. McMAHAN,
Attorney for Henry B. Mason.
W. P. FENNELL,
Attorney for Kean & Kean.

543 The supreme court. Henry B. Mason *et al. vs.* Calumet Canal and Imp. Co. Filed Oct. 20, 1896. Alex. Hess, clerk.

544 In the Supreme Court, May Term, 1896.

HENRY B. MASON ET AL., Appellants,
vs.
THE CALUMET CANAL AND IMPROVEMENT COMPANY, Appellee.
} Agreement to Submit Appeal for Trial.

We hereby submit the appeal in this cause upon the separate and several assignments of errors, for trial hereby expressly waiving all notices required by law to be given by the parties appealing to their co-parties in the lower court, or to the appellee.

WILLIS C. McMAHAN,
Attorney for Henry B. Mason.
W. P. FENNELL,
Attorney for Samuel A. & Annie R. Kean et al.
WILLIAM JOHNSTON,
Attorney for The Calumet Canal and Improvement Company, Appellee.

545 In the supreme court. Henry B. Mason, *et al. vs.* Calumet Canal and Imp. Co. Joinder in assignments of error. Filed Oct. 20, 1896. Alex. Hess, clerk.

546–552 STATE OF INDIANA:

In the Supreme Court, May Term, 1896.

HENRY B. MASON ET AL., Appellants,
vs.
THE CALUMET CANAL AND IMPROVEMENT COMPANY, Appellee.
} Answer to the Several Assignments of Errors.

Filed Oct. 20, 1896. Alex. Hess.

The appellee for answer, to the several assignments of errors herein filed by the appellants, says; that there is no error in the judgment or proceedings of the court below.

Wherefore it prays that the judgment be in all things affirmed.

WILLIAM JOHNSTON,
Attorney for Appellee.

* * * * * * *

553–559 Appellants,
vs.
THE CALUMET CANAL AND IMPROVEMENT COMPANY, Appellee.

The appellant, Henry B. Mason, says that there is manifest error in the judgment and proceedings of the lower court in this: That the court erred in overruling the said Henry B. Mason's motion for a new trial.

Wherefore, the said appellants pray that the judgment of the lower court may be in all things reversed.

WILLIS C. McMAHAN,
Att'y for Appellant.

Filed Oct. 20, 1896.
ALEX. HESS.

* * * * * * *

560-566 Appellants,
vs.
THE CALUMET CANAL AND IMPROVEMENT COMPANY, Appellee.

The appellant, Annie R. Kean, says that there is manifest error in the judgment and proceedings of the lower court in this: That the court erred in overruling the said Annie R. Kean's motion for a new trial.

Wherefore the said appellants pray that the judgment of the lower court may be in all things reversed.

WILLIAM P. FENNELL,
Att'y for Appellant Annie R. Kean.

Filed Oct. 20, 1896.
ALEX. HESS.

* * * * * * *

567 Appellants,
vs.
THE CALUMET CANAL AND IMPROVEMENT COMPANY, Appellee.

The appellants Annie R. Kean, Samuel A. Kean, Orson Felt, Henry Felt, Sarah A. Smail and Charles Kreuter, severally say that there is manifest error in the judgment and proceedings of the lower court in this: That the court erred in overruling the said appellants' Kean and Kean, Felt and Felt, Smail and Kreuter's several motion- for a new trial.

Wherefore the said appellants pray that the judgment of the lower court may be in all things reversed.

WILLIAM P. FENNELL,
Att'y for said Appellants.

Filed Oct. 20, 1896.
ALEX. HESS.

568 And afterwards, to wit: on the 14th day of December, 1896, come the appellants by counsel, and file six copies of appellants' brief herein.

And afterwards, to wit: on the 16th day of December, 1896, comes the appellant, Mason, by counsel, and files five copies of his statement and brief.

And afterwards, to wit: on the 24th day of March, 1897, the appellee, by order of court, was required to file its brief within twenty (20) days.

And afterwards, to wit: on the 14th day of April, 1897, comes the appellee by counsel, and files two copies of appellee's brief.

And afterwards, to wit: on the 22nd day of April, 1897, come the parties by counsel, and file their joint petition to advance herein.

And afterwards, to wit: on the 12th day of May, 1897, come the parties by counsel, and the court being advised in the premises, overrules the joint petition to advance heretofore filed herein.

And afterwards, to wit: on the 24th day of November, 1897, come the appellants by counsel, and file dismissal as to Henry B. Mason.

And afterwards, to wit: on the 8th day of December, 1897, the court being advised in the premises, dismisses the appeal herein as to the appellant Henry B. Mason.

569 And afterwards, to wit: on the 26th day of April, 1898, being the 134th judicial day of the November term, 1897, come the parties by their attorneys, and the court being advised in the premises, affirms the judgment of the court below, with the following opinion pronounced by Howard, chief justice:

570 HENRY B. MASON ET AL.
v.
THE CALUMET CANAL AND IMPROVEMENT COMPANY. } No. 18097.

From the Porter circuit court.

HOWARD, *C. J.*:

This was an action brought by appellee against appellants and others, to quiet title to certain real estate described in the complaint, and situated in S. ½ section 18, and section 19, township 37 N. range 9 W. and in sections 12, 13 and 24, township 37, N. range 10 W. in Lake county. The lands in controversy, together with other lands, were conveyed to the State of Indiana by the United States under the swamp-land act of 1850, and by the descriptions of the Government survey of 1834. By the same descriptions, the lands were conveyed by the State to the remote grantors of appellee. Part of the lands are included in what was once the bed of Wolf lake and the bed of Lake George, but since the survey the waters have, in large measure, receded, leaving the lake beds comparatively dry land.

In 1875 certain persons under the assumption that the beds of the lakes had not been surveyed in 1834, procured a resurvey of that part of the lands formerly covered by the waters, and it is through this last survey, and the sales made in pursuance thereof, that appellants claim title. The case before us, therefore, in so far as concerns source of title, does not differ from that of Kean *v.* Roby, 145 Ind. 221. On the authority of the decision in that case, there can be no question that the resurvey of 1875, as also the sales made thereunder, were wholly invalid, and, consequently, that appellee's title as based upon the original survey of 1834, and the sales made under that survey, is good. No real distinction in this regard has been shown between the two cases.

The second contention is that the action is barred by the fifteen and the twenty years' statute of limitation. This contention is plainly

founded upon the same theory as the first, namely, that the appellants
obtained some title or took possession of some kind under the
571 void survey of 1875. As to title, as we have seen, there was
none. As to possession, the court heard the evidence and did not find, nor can we perceive, that the continuous and lawful possession of appellee and its immediate and remote grantors was ever broken by the unauthorized entrance, if any there was, on the part of appellants or any of them. Appellee and its grantors continued to pay the taxes assessed on the lands, by the descriptions in their deeds, coming down from the original Government survey, and had at all times such possession of and exercised such dominion over the territory as was possible in the case of wild, wet and uncultivated lands. As said by this court, in Worthley *v.* Burbanks, 146 Ind. 534, it is manifest that as to adverse possession there can be no absolutely unvarying rule with reference to every kind of real estate. The requirement as to the kind of occupancy of or dominion over land which is necessary to show adverse possession in the case of a cultivated farm, a town lot or a residence in a populous city, may be quite inapplicable or even impossible in the case of a piece of desert land, a mining claim, a non-navigable lake, a prairie or a forest. The evidence in this case, as we think, was sufficient to show continuous possession by appellee and its grantors of the lands in controversy. The appeal as to Henry B. Mason has been dismissed on his petition, and the contentions made in the brief filed in his behalf need not therefore be considered.

Judgment affirmed.

572 And afterwards, to wit: on April 23, 1900, come the appellants by counsel, and file their petition for a writ of error to the Supreme Court of the United States, and bond.

And on the same day, come the appellants by counsel, and file their assignment of errors in the Supreme Court of the United States.

And on the same day, the petition for writ of error was submitted to the court and granted and the bond approved.

And on the same day, to wit: come the appellants by counsel, and file a writ of error from the Supreme Court of the United States.

And on the same day, the supreme court of Indiana issued a citation thereon.

573–579 STATE OF INDIANA:

In the Supreme Court.

No. 18097.

* * * * * * *

580 Appellants,
vs.
THE CALUMET CANAL AND IMPROVEMENT COMPANY, Appellee.

Petition for Writ of Error.

To Honorable John V. Hadley, chief justice of the supreme court of Indiana:

581 The appellants, Annie R. Kean, Samuel A. Kean, Henry Felt, Orson B. Felt, Sarah A. Smail & Charles Kreuter and each of them separately, pray that a writ of error from the Supreme Court of the United States to the supreme court of Indiana in the above-entitled cause may be allowed by your honor as chief justice of the supreme court of Indiana, and for cause thereof alleges:

That by the record, opinion and judgment in said cause it appears that the decision of the said supreme court of the State of Indiana, is against the title and right to certain real estate specially set up and claimed by the appellants. Annie R. Kean, Samuel A. Kean, Henry B. Felt, Austin Felt and Sarah A. Smale, under the statutes, patents, deeds of conveyances and authority of the United States of America, and that therefore questions are presented by the record, opinion and judgment herein which are properly cognizable by the Supreme Court of the United States.

Wherefore, petitioners pray for an allowance of the writ of error from the Supreme Court of the United States to the supreme court of the State of Indiana as before stated and that your honor will sign the citation thereon.

WILLIAM P. FENNELL,
Counsel for Appellants, Plaintiffs in Error.

April 23d, 1900.—Granted.
JOHN V. HADLEY, *C. J.*

582 [Endorsed:] No. 18097 Indiana supreme court Petition for writ of error. Filed Apr 23 1900 R. A. Brown clerk.

583 Filed Apr. 23, 1900. R. A. Brown, Clerk.

UNITED STATES OF AMERICA:

The President of the United States of America to the judges of the supreme court of the State of Indiana, Greeting:

Because on the record and proceedings, as also on the rendition of a judgment in a plea which is in the said supreme court, before you, between The Calumet Canal and Improvement Company and Annie R. Kean, Samuel A. Kean, Henry Felt, Orson B. Felt, Sarah A. Smale and

Charles Kreuter a manifest error has happened to the great damage of the said Annie R. Kean *et al.* as by their complaint appears: And it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid on this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 23d day of May next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Seal Circuit Court of the United States, District of Indiana.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court this 23d day of April A. D. 1900.

NOBLE C. BUTLER, *Clerk.*

584–590 UNITED STATES OF AMERICA:

In the United States Supreme Court.

* * * * * * *

591 Appellants, Plaintiffs in Error,
vs.
THE CALUMET CANAL AND IMPROVEMENT COMPANY, Appellee, Defendant in Error.

Citation.

592 To the Calumet Canal and Improvement Company:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be holden at Washington, D. C., thirty days after the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Indiana, wherein Annie R. Kean, Samuel A. Kean, Henry Felt, Orson B. Felt, Sarah A. Smail and Charles Kreuter, are plaintiffs in error, and you are defendant in error, to show cause if any there be, why the opinion and judgment rendered against the said plaintiffs in error, as in said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable John V. Hadley, chief justice of the supreme court of Indiana, this 23rd day of April, in the year of our Lord one thousand nine hundred.

JOHN V. HADLEY,
Chief Justice.

I hereby acknowledge service of the above citation this — day of April, A. D., 1900.

——— ———.

593–599 Filed Apr. 23, 1900. R. A. Brown, Clerk.

UNITED STATES OF AMERICA:

In the Supreme Court.

No. —.

* * * * * * *

600 Appellants,
vs.
THE CALUMET CANAL AND IMPROVEMENT COMPANY, Appellee.

Assignment of Errors.

601 The appellants, Annie R. Kean, Samuel A. Kean, Henry Felt, Orson B. Felt, Sarah A. Samil and Charles Kreuter, complains to the Supreme Court of the United States of America and say that there has been manifest error in record, judgment and proceedings of the circuit court for Porter county in the State of Indiana, and in the supreme court of the State of Indiana in this cause, and specifically assigns the following, to wit:

1. The circuit court of Porter county, State of Indiana, erred in that the findings and judgment of the court are not sustained by sufficient evidence.

2. The circuit court of Porter county, State of Indiana, erred in that the findings and judgment of the court are not sustained by law.

3. The circuit court of Porter county, State of Indiana, erred in its conclusions of law.

4. The circuit court of Porter county, State of Indiana, erred in overruling appellants' motion for a new trial.

5. The supreme court of the State of Indiana, erred in affirming the judgment and decision of the circuit court for Porter county, State of Indiana.

6. The supreme court of the State of Indiana erred in holding that the original survey of the United States made in 1834, pursuant to an act of Congress passed on the 2nd day of March, 1833, included all the sections comprising the bed of Wolf lake, situated in the State of Indiana.

7. The supreme court of Indiana erred in holding that the original survey of the United States made in 1835, pursuant to an act of Congress passed on the 2nd day of March, 1833, included all of fractional section fifteen (15); lots number three (3) and four (4), survey of 1835 of section eighteen (18), the same being all of the south half of said section; lots one (1), two (2), three (3)
602 and four (4); the southeast quarter (S. E. ¼) of the northeast quarter (N. E. ¼) and the southeast quarter (S. E. ¼), survey of 1835, of section nineteen (19), the same being the whole of said

section, all in township thirty-seven (37), north of range nine (9) west in Lake county and State of Indiana, and also

Lots three (3) and four (4) survey of 1834 of section twelve (12), the same being all of the south half of said section; lots one (1) and two (2) survey of 1834, section thirteen (13), the same being the whole of said section; lots two (2) and three (3) and the northwest quarter (N. W. ¼) of the southwest quarter (S. W. ¼) and the southeast quarter (S. E. ¼) of the southeast quarter (S. E. ¼) survey of 1834, of section twenty-four (24), the same being the whole of the north half of said section; and the northwest quarter of the southwest quarter (S. W. ¼) and the southeast quarter (S. E. ¼) of the southeast quarter (S. E. ¼) of said section; excepting and reserving from said above description the following tract lying, being and situate in sections twenty (20), twenty-one (21) and twenty-eight (28), to wit: Commencing at a point on the east line of Indiana boulevard, where the center line of section twenty (20) in township thirty-seven (37), north of range (9) west, intersects the same, and running thence east along said center line to the quarter post on the east line of section twenty (20), thence southeasterly in a straight line to the southeast corner of the north half of the northwest quarter (N. W. ¼) of section twenty-eight (28), in township thirty-seven (37), range nine (9) aforesaid; thence west on the south line of said north half of the northwest quarter (N. W. ¼) of section twenty-eight (28), to the east line of said Indiana boulevard to the point or place of commencement, containing one hundred and sixty acres, excepting and disclaiming any interest in or to all those parts of sections twelve (12), thirteen (13), eighteen (18), nineteen (19) and twenty-four (24) mentioned in said
603 description which are east, south or west of the meander line of the beds of Wolf and George lakes, all in township thirty-seven (37), north of range ten (10) west, in Lake county in the State of Indiana.

8. The supreme court of the State of Indiana erred in holding and deciding that the original survey made by the United States in 1835, pursuant to and act of Congress passed on the 2nd day of March, 1833, extended over both the land and water of the following-described real estate in Lake county, State of Indiana, to wit: fractional section fifteen (15); lots number three (3) and four (4), survey of 1835 of section eighteen (18), the same being all the south half of said section; lots one (1), two (2), three (3), and four (4); the southeast quarter (S. E. ¼), of the northeast quarter (N. E. ¼) and the southeast quarter (S. E. ¼), survey of 1835, of section nineteen (19), the same being the whole of said section, all in township thirty-seven (37), north of range nine (9) west in Lake county and State of Indiana, and also lots three (3) and four (4) survey of 1834 of section twelve (12), the same being all of the south half of said section; lots one (1) and two (2) survey of 1834, section thirteen (13), the same being the whole of said section; lots two (2) and three (3) and the northwest quarter (N. W. ¼) of the southwest quarter (S. W. ¼) and the southeast quarter (S. E. ¼) of the southeast quarter (S. E. ¼), survey of 1834, of section twenty-four (24), the same being the whole of the north half of said section; and the northwest quarter

(N. W. ¼) of the southwest quarter (S. W. ¼) and the southeast quarter (S. E. ¼) of the southeast quarter (S. E. ¼) of said section; excepting and reserving from said above description the following tract lying, being and situate in sections twenty (20), twenty-one (21) and twenty-eight (28), to wit: Commencing at a point on the east line of Indiana boulevard, where the center line of section twenty (20) in township thirty-seven (37), north of range nine (9) west, intersects the same and running thence east along said center line to the quarter post on the east line of section
604 twenty (20), thence southeasterly in a straight line to the southeast corner of the north half of the northwest quarter (N. W. ¼) of section twenty-eight (28), in township thirty-seven (37), range nine (9) aforesaid, thence west along the south line of said north half of the northwest quarter (N. W. ¼) of section twenty-eight (28), to the east line of Indiana boulevard to the point or place of commencement, containing one hundred and sixty acres, excepting and disclaiming any interest in or to all those parts of sections twelve (12), thirteen (13), eighteen (18), nineteen (19) and twenty-four (24) mentioned in said description which are east, south or west of the meander line of the beds of Wolf and George lakes, all in township thirty-seven (37), north of range ten (10) west, in Lake county, in the State of Indiana.

9. The supreme court of the State of Indiana erred in holding that the following-described real estate, to wit: all of fractional section fifteen (15); lots number three (3) and four (4), survey of 1835, of section eighteen (18), the same being all of the south half of said section; lots one (1), two (2), three (3) and four (4) the southeast quarter (S. E. ¼) of the northeast quarter (N. E. ¼) and the southeast quarter (S. E. ¼), survey of 1835 of section nineteen (19), the same being the whole of said section, all in township thirty-seven (37), north of range nine (9) west in Lake county, State of Indiana, and also

Lots three (3) and four (4), survey of 1834 of section twelve (12), the same being all of the south half of said section; lots one (1) and two (2) survey of 1834, section thirteen (13), the same being the whole of said section; lots two (2) and three (3) and the northwest quarter (N. W. ¼) of the southwest quarter (S. W. ¼) and the southeast quarter (S. E. ¼) of the southeast quarter (S. E. ¼) survey of 1834 of section twenty-four (24) the same being the north half of said section; and the northwest quarter (N. W. ¼) of the southwest quarter (S. W. ¼) and the southeast quarter (S. E. ¼) of the southeast quarter (S. E. ¼) of said section, ex-
605 cepting and reserving from said above description the following tract lying, being and situate in section- twenty (20), twenty-one (21) and twenty-eight (28), to wit: Commencing at a point on the east line of Indiana boulevard, where the center line of section twenty (20) in township thirty-seven (37), north of range nine (9) west, intersects the same, and running thence east along said center line to the quarter post on the east line of section twenty (20), thence southeasterly in a straight line to the southeast corner of the north half of the northwest quarter (N. W. ¼) of section

twenty-eight (28) in township thirty-seven (37), range nine (9) aforesaid, thence west on the south line of said north half of the northwest quarter (N. W. ¼) of section twenty-eight (28) to the east line of said Indiana boulevard to the point or place of commencement, containing one hundred and sixty acres, excepting and disclaiming interest in or to all those parts of section- twelve (12), thirteen (13), eighteen (18), nineteen (19) and twenty-four (24) mentioned in said description which are east, south or west of the meander line of the beds of Wolf and George lakes, all in township thirty-seven (37), north of range ten (10) west in Lake county, in the State of Indiana, including that covered by the waters of Wolf lake as well as the perfectly dry land on the borders of said lake, passed to the State of Indiana, from the ownership of the United States of America, by the swamp-land act of 1850, the same being the act of Congress passed on the 28th day of September, 1850.

10. The supreme court of the State of Indiana erred in holding that the survey made by the United States of America in 1875, of Wolf lake and the lands under the bed of said lake, in the State of Indiana, pursuant to an order of the Commissioner of the Land Office of the United States on the — day of —— 1874, was a nul-ity for the reason that the said real estate situated under the bed of said lake, had previously passed into the ownership of the State of Indiana.

606 11. The supreme court of the State of Indiana erred in holding that the appellants, Annie R. Kean, Samuel A. Kean, Henry Felt, Orson B. Felt, Sarah A. Smail and Charles Kreuter, gained no title to the following-described real estate situated in the State of Indiana, to wit: That portion of the real estate described in the complaint filed in this cause, lying, being and situate within the meander lines of the beds of Wolf and George lakes, in township thirty-seven (37), north of ranges nine and ten (10) west, State of Indiana as said meander lines were established and constituted by the surveys of the United States of America, by reason of and through certain conveyances of the United States of America, to the grantors of these appellants made on the — day of ——, pursuant to an act of Congress approved on the 17th day of July, 1854.

12. The supreme court of the State of Indiana erred in holding that the Land Department of the United States of America had no jurisdiction to determine the validity of the title of these appellants and of their grantors in and to the following-described real estate, to wit: That portion of the real estate described in the complaint filed in this cause, lying, being and situate within the meander lines of the beds of Wolf and George lakes, in township thirty-seven (37), north of ranges nine and ten (10) west, State of Indiana as said meander lines were established and constituted by the surveys of the United States of America, for the reason that at the time the said real estate had been previously disposed of.

Wherefore, the appellants pray that the said record, proceedings and judgment be in all things reversed.

WILLIAM P. FENNELL,
Counsel for Plaintiffs in Error.

606½ [Endorsed:] No. —. United States Supreme Court. Assignment of errors. Filed Apr. 23 1900 R. A. Brown clerk.

607 STATE OF INDIANA:

In the Supreme Court.

HENRY B. MASON, FAY CALHOUN MASON, His Wife; Annie R. Kean, Samuel A. Kean, Her Husband; Sarah A. Smale, *et al.*, Appellants,
vs.
THE CALUMET CANAL AND IMPROVEMENT Company, Appellee.

No. —. Filed Apr. 23, 1900. R. A. Brown, Clerk.

Appeal Bond.

Know all men by these presents that we Sarah A. Smale, Henry F. Felt, Annie R. Kean and Samuel A. Kean as principals & Rob't A. Kean and W. H. Latta as surety-s are held and firmly bound unto the Calumet Canal and Improvement Company in the sum of five hundred dollars to be paid to the said appellee, to which payment well and truly to be made we bind ourselves jointly and severally and our heirs, and each of our heirs, executors and administrators jointly by these presents.

Sealed with*out* our seals and dated this 20 day of April, 1900.

The condition of this obligation is that whereas the above-named appellants have prosecuted their writ of error to the Supreme Court of the United States to reverse the finding and judgment rendered in the above-entitled suit by the circuit court, for the county of Porter, and State of Indiana, and the supreme court of the State of Indiana heretofore rendered in the above-entitled cause, now therefore if the above-named appellants shall prosecute their said
608 writ of error to effect and answer all costs and damages that may be adjudged or awarded against them if they shall fail to make good their plea, then this obligation shall be null and void otherwise in full force and effect.

HENRY F. FELT.
SARAH A. SMALE. [SEAL.]
ANNIE R. KEAN. [SEAL.]
SAMUEL A. KEAN. [SEAL.]
ROBERT A. KEAN. [SEAL.]
W. H. LATTA.

Approved this 23d April, 1900.
JOHN R. HADLEY, *C. J.*

[Endorsed:] Filed Apr. 23 1900. R. A. Brown, clerk.

609 STATE OF INDIANA, }
Supreme Court. }

I, Robert A. Brown, clerk of the supreme court of the State of Indiana, certify the above and foregoing to be a full, true and complete transcript of the record of proceedings had, papers filed, (excepting briefs), motions decided, rulings made, opinions delivered, judgments rendered, and all decrees and orders entered in the supreme court of Indiana in the above-entitled cause; also the original writ of error from the Supreme Court of the United States to the supreme court of Indiana in this cause and the original citation to the defendant in error, and the *the* original assignment of errors in the Supreme Court of the United States on said writ of error and original cost bond.

Which said transcript, annexed hereto and hereby returned, together with said original writ of error and original citation and original assignment of errors and original cost bond, I hereby certify as and for my full return to said writ of error.

In witness whereof I have hereunto set my hand and affixed the seal of said supreme court of Indiana, at the city of Indianapolis, this 23rd day of April, 1900.

[Seal Supreme Court, State of Indiana, MDCCCXVI.]

ROB'T A. BROWN,
Clerk of Supreme Court.

610 In the Supreme Court of the United States, October Term, 1900.

ANNA R. KEAN ET AL., Plaintiffs in Error,
vs.
THE CALUMET CANAL & IMPROVEMENT COMPANY, Defendant in Error. } No. 260.

Now comes Anna R. Kean *et al.* plaintiffs in error by William P. Fennell their attorney, and under the rule of the court thereto pertaining says that they intend to rely upon the following errors committed by the supreme court of Indiana, and designate the assignment of errors at page — of the record and the following parts of the record to be printed which are necessary and material to enable the court to pass upon the issues involved in the above-entitled case.

The clerk will print the following parts of the record:

From pages 1 inclusive to page 2 down to and including the words "to wit:" in the eleventh line from the bottom of said page.

Print: Beginning at the 4th line on the 25th page, "and thereupon &c.," and print down to and including the words "to wit:" on the 16th line of said page 25.

Print: Begin on page 35 with the words "Affidavit for change of venue" and print to the end of the page.

611 Begin at the 9th line from the bottom on page 40 and print to the end of page 41.

Begin at the top of page 42 and print the first six lines.
Begin at top of page 47 down to end of page 53.
Print the 15th and 16th lines on page 59.
Print the last line on page 66.
Print from the 2nd to the 5th line both inclusive on page 73.
Begin with 9th line from bottom on page 78 and print down to and inclusive the 21st line on page 79.
Print the 86th page.
Print the 7th and 8th lines of page 93.
Print the 99th page.
Print last 4 lines on page 105.
Print first 13 lines on page 111.
Print pages 118 and 119.
Begin at top of page 126 and print down to and include the 22nd line on said page.
Print first 16 lines of page 133.
Begin at top — page 140 and print to end of page 171, inclusive.
Begin at top of page 252 and print down to the red lines across page 288.
Print pages 391 and 392.
Begin at top of page 416 and print to page 517 inclusive.
Print page 538.
Print page 540 to 546 inclusive.
Print the last 13 lines of page 553.
" " " " 560.
" " 15 " 567.
Print from top of page 568 to end of 4th line on page 573.
612 Print from and including last 7 lines on page 580, to end of 2nd line on page 584.
Print last 7 lines on page 591 to end of 2nd line on page 593.
Print from and including last 5 lines on page 600 to end of page 609.

WM. P. FENNELL,
Attorney for Anna R. Kean et al., Plaintiffs in Error.

613 In the Supreme Court of the United States, October Term, 1900.

ANNA R. KEAN ET AL., Plaintiffs in Error,
vs.
THE CALUMET CANAL & IMPROVEMENT COMPANY, Defendant in Error.

To W. O. Johnston and C. E. Kremer, attorneys for defendant in error:

You and each of you are hereby notified that I have this day filed with the clerk of the Supreme Court a designation of the assignment of errors upon which I intend to rely and such parts of the record as I deem necessary to be printed in the above-entitled case and enclose herein a copy thereof.

WM. P. FENNELL,
Attorney for Anna R. Kean et al., Plaintiffs in Error.

DISTRICT OF COLUMBIA, } ss:
City of Washington, }

William P. Fennell being first duly sworn on oath says that he deposited in the mail at Washington, D. C., a copy of the above and foregoing notice and designation of parts of record to be printed properly stamped and addressed to W. O. Johnston and C. E. Kremer, attorneys for defendant in error at their respective offices in Chicago, Ills., this 21st day of July, 1900.

WM. P. FENNELL.

Sworn to and subscribed before me this 21st day of July, 1900.

[Seal of John J. McGrain, Notary Public, Washington, D. C.]

JOHN J. McGRAIN,
Notary Public.

614 [Endorsed:] Supreme Court U. S. File No. 17,730. Indiana sup. ct. Term No. 616. Oct. term 1900. Anna R. Kean *et als.* pl'ffs in error *vs.* The Calumet Canal & Improvement Company def't in error Designation of parts of record to be printed. Wm. P. Fennell, att'y for pl'ffs in error.

615 [Endorsed:] File No. 17,730. Supreme Court U. S. October term, 1900. Term No. 47. Annie R. Kean *et al.*, P. E. *vs.* The Calumet Canal & Improvement Co. Designation by plaintiffs in error of parts of record to be printed. Office Supreme Court U. S. Filed Jul- 21, 1900. James H. McKenney, clerk.

Endorsed on cover: File No. 17,730. Indiana supreme court. Term No. 47. Annie R. Kean *et al.* plaintiffs in error, *vs.* The Calumet Canal and Improvement Company. Filed April 25th, 1900.